

Why the mystery?

An investigation into the murky world of estate agents fees and contracts



A HomeOwners Alliance Report
7th March 2014

About the HomeOwners Alliance

The HomeOwners Alliance champions the interests of Britain's homeowners and aspiring homeowners.

We are a consumer group providing helpful advice and services and acting as the voice of the homeowner in the media, lobbying for the interests of homeowners and aspiring homeowners in government, and campaigning against bad practices in industry.

We directly engage with government and the media by conducting independent research and publishing reports that promote and champion the interests of homeowners. Previous publications include:

- ***The Death of a Dream – the crisis of home ownership in the UK (2012)***
- ***On the Edge - 300,000 interest-only mortgage holders set to lose their home (2013)***
- ***Stamping on Aspiration - The astonishing impact of stamp duty on homeowners and the housing market (2013)***
- ***The Stresses of Buying and Owning a Home (2013)***

Sunday Times wrote: *“with the launch of the HomeOwners Alliance, British property owners finally have an ally.”*

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Setting the scene

Estate agent fees and contracts are the biggest single cause of complaints that the HomeOwners Alliance gets from people selling their home. They don't know how much they should pay, don't know what their rights are, and often feel trapped in contracts they feel are deeply unfair, with hidden charges and surprising claims. It is one of the biggest causes of legal conflict between homeowners and industry professionals, with many disputes between home sellers and estate agents ending up in court. These problems and disputes add massively to the stress and costs of homeownership. Disputes between homeowners and conveyancers or mortgage companies pale into insignificance by comparison.

The fundamental problem is that the playing field between homesellers and estate agents is far from level, and is largely unregulated despite the large sums of money involved. Estate agents are industry insiders who buy and sell homes all day every day of their lives, and know all the tricks of the trade. The homeowner gets involved perhaps once every twenty years, meaning they usually have a lack of experience and knowledge that leaves them open to being taken advantage of.

The aim of *Why the Mystery?* is to shed light on the fees and contracts of estate agents, to help ensure that there is a more level playing field. We believe the more knowledge that homeowners have, the more transparency there is, the better will be their experience and the fewer disputes there will be. We operate from the premise that, as in other industries, good practitioners have nothing to fear from openness.

The trouble is that many estate agents are far from open. Despite flaunting the price of the homes they sell in their front windows, they are usually far from upfront about their own fees that they charge homesellers. Homes are sold on price, and yet the people who sell them are very reluctant to compete on price (in contrast to conveyancers, for example). Such lack of open competition on fees means that homeowners often pay for higher estate agent fees than they need to.

Anyone can set themselves up as an estate agent (no training or license is required), and the contracts that estate agents issue homesellers are not standardised. This leads to a huge variety of terms and conditions, and too often to clauses and conditions that trip up unsuspecting homeowners. Because most homeowners have so little experience of buying or selling property, they do not know what to look out for and what to accept, leaving them at the mercy of sharp practices.

It is in the interest of good estate agents for the whole industry to operate in a more open and transparent – and ultimately fair - way. It would not just be good for homeowners, who would benefit from lower fees and fewer disputes, but for the reputation of the industry.

Key Findings

- **Estate agent fees/ commission rates and general contract terms are not published in practice:**
 - 98% of estate agent websites do not feature their standard commission rate or terms
 - 82% of estate agent websites make no reference to fees whatsoever; 16% of websites reference 'competitive fees' or 'no sale no fee'; 2% list specific fees
 - Few major national or regional estate agents make any reference to fees or terms on their websites
 - Websites are awash with 'free, no obligation valuation' offers and in-house services but no mention of fees or contract terms
- **Majority of estate agencies are reticent about discussing fees and business terms over the phone** – most prefer to do an in-person valuation before disclosing fees or terms. When asked to give an idea of rates and contract terms at the initial point of enquiry:
 - 2 out of 3 agents push to do an in-home valuation first (31 of 49 enquiries)
 - 1 in 3 agents refuse to give fees out over the phone (17 of 49 enquiries)
 - 1 in 6 enquiries uncover questionable practices (8 of 49 enquiries)
- **Regional/national chains often avoid discussing fees over the phone** or only permit these discussions with senior sales staff. **However, most independent agents will give out fees** at the initial point of enquiry (19 of 22).
- **Valuations are the main excuse provided for not disclosing fees** and are used as the mechanism for engaging new customers – some agencies say there is no way of giving an idea of fees without visiting the property. These agencies often have valuation bookers answering the telephone and they will not discuss fees or contract terms and are not empowered to transfer calls or deviate from the valuation booking script.
- Some agents will disclose fees and business terms but will only allow senior negotiators to discuss this information – there is a sense that **dissemination of this information is carefully controlled**.
- **Some agents willingly and openly discuss their typical fees and contract terms** at the initial point of enquiry and they appear open, straightforward, professional and trustworthy.
- **Based on estate agents willing to provide their standard fees and business terms, commission rates range from just under 1% up to 2.5% + VAT for a sole agency contract.** Smaller agents tend to be at the cheaper end of the spectrum and regional/ national chains at the upper end.
- **Most agents work on a no sale, no fee basis, with no additional charges for marketing. Fees are payable once contracts have exchanged and completion takes place.**
 - There are a few instances of agents charging 'additional fees' like registration fees (£99), marketing incentive fees (£200) or non-refundable deposits if the client withdraws from the sale (£500).
 - Other questionable practices include: lengthy sole agency contract periods (20 weeks +), 'sole selling rights' contracts, commission commitments that extend beyond the contract period, commission due upon exchange even if buyer pulls out at completion and charging both the buyer and seller.
- Most agents are upfront that an **Energy Performance Certificate (EPC) is now a legal requirement and is a separate up-front cost when putting your property on the market.**

Agents usually offer this as a service. A wide range of rates are quoted for the EPC (from £50 inclusive of VAT up to £150+ VAT). All point out it is not necessary to use their provider; that an EPC can be arranged independently. Only a few estate agents explained that an EPC is valid for 10 years so a new certificate may not be required.

- It is a legal requirement that agents clearly state whether or not VAT is included in their fee.¹ **Agents are not always clearly communicating VAT** up front when giving out approximate figures about their fees over the phone. It is a legal requirement to disclose upfront the price and any taxes and it can come as a shock when VAT is only revealed at the point of finalising and signing a contract.
- **Sole agency tie-in periods vary widely from one estate agent to another.** Some agents require no more than 2 weeks written notice, while others lock in clients for 20 weeks, plus 28 days written notice.
- The vast majority of estate agents say their **fees and contract terms are negotiable**. They underline that they would not want to lose an instruction over fee or contract length.
- In buoyant markets, notably London, where there is a shortage of supply and many agencies have a long list of applicants wanting to buy, agents are particularly willing to negotiate on their commission rates and contract terms.
- **New fee structures are emerging.** These include fixed fee contracts so sellers know up front exactly what fee they will pay their agent or sliding fees based on achievement of asking price (or surpassing the asking price). These may also include sliding fees based on speed of the sale. Some agents offer a menu of options – from posting on the property portal sites to a full estate agents' service.

¹ The Consumer Protection from Unfair Trading Regulations 2008 covers commercial practices between traders and consumers. Regulation 6 prohibits misleading omissions, or information that is material to a consumer decision. 6(4) d (i) states that the price, including all taxes, is material. The practice of disclosing fees quoted are exclusive of VAT at the time of requiring the consumer to sign the contract may be considered to be too late in the process for them to change their mind.

And then they came for the estate agents, Dan McCrum, Financial times
<http://ftalphaville.ft.com/2013/12/02/1707522/and-then-they-came-for-the-estate-agents/>

Recommendations

Our recommendations to industry

Estate agents that are open and transparent about their fees and business terms appear honest, trustworthy and professional. We would encourage all estate agents to follow this practice by:

- Publishing standard fees (or a range of commission rates)
- Publishing sole agency contract length (tie in period and required notice period)
- Stating standard business terms (such as no sale, no fee, payment on agreed sale price upon completion, no withdrawal fees)
- Clearly stating whether fees are inclusive or exclusive of VAT
- Indicating whether fees and terms are flexible/ negotiable
- Outlining any caveats or variations – rates and terms may be presented as a range or as indicative dependent on the value and condition of the property
- The Property Ombudsman to update its Code of Practice for Residential Estate Agents to include the above points and so it is not in conflict with The Consumer Protection from Unfair Trading Regulations 2008

Our recommendations to sellers

When considering which estate agency to instruct, sellers should remember that:

- Estate agent fees and contract terms can vary. You should have an idea of these facts before booking a valuation and hearing more about the agent's service offering. **Speak to at least three agents** before inviting them to value the property.
- It is reasonable to expect that an estate agent can give you an idea of their typical fees and contract terms on their website or during your initial phone call:
 - Do not be pressured into a face-to-face valuation meeting until you feel ready
 - Some agents are willing to be open and transparent about their fees and contract terms and whether these are negotiable, so shop around
 - Ask agents to email standard contract terms – you should review and amend the contract before signing and ask questions or seek independent advice about anything that is unclear
- **Estate agents should clearly state whether fees include or exclude VAT.** If the agent does not say upfront, be sure to check this point. In their contract, agents should express their fee as an actual amount, based on the asking price, as required by The Property Ombudsman.²
- Fair agents will operate on a no sale, no fee basis with commission payable on the agreed sale price once contracts have exchanged and the sale is completed. There should be no charge should you choose to withdraw your home from the market
 - Be sure to confirm this is the case
 - Avoid extra and non-refundable marketing or withdrawal fees
- Most agents can arrange for an energy performance certificate (EPC) to be done on your behalf, and this should be **your only up-front cost**. Shop around as we think you can find

² Code of Practice for Residential Estate Agents, The Property Ombudsman, August 2011, paragraph 3i

cheaper elsewhere. There is no obligation to use the estate agent provider and you may already have a valid EPC if the property has been recently built or sold.

- **Negotiate fees and contract terms** – you are the client. You may want to consider incentives for surpassing the asking price (sliding commission). Pay attention to the sole agency lock in period which varies dramatically across agents and is onerous in some instances (4 weeks or 12 weeks are the most popular terms); more than this is unnecessary.
- **Be aware that you are under no obligation to use in-house estate agent services** (such as mortgages or conveyancing). Be sure to compare rates and service ratings as estate agents almost always earn a commission on these extra services.

Review any estate agent contract carefully before signing and before allowing the agent to take photos or to begin marketing your property. Be mindful of the following:

- **Review all commission rates** – they should be in line with what you have discussed/ agreed with the agent and should be on the agreed final sale price
- Be sure it is **clear whether or not VAT** is included in the fee
- **Review the type of contract** – you should strongly resist agreeing to sole selling rights as this means the estate agent gets a commission even if you find the buyer yourself³
- **Ensure there are no additional charges or withdrawal fees** and that commission is payable upon completion
- **Be wary of contracts with handwritten changes** – this is used by some to apply additional marketing charges or withdrawal fees, sometimes called ‘marketing incentive fee’
- **Ensure you have not been signed up to any in-house services (such as conveyancing, energy performance certificates) you have not agreed to** and check that no services have been handwritten onto your contract
- **Review the length of the tie in period and the written notice period** – negotiate this if you are not comfortable. Be sure there is no extended introducer commitment period. Open ended sole agency contracts can mean that an agent can still claim commission if it introduced a buyer - even if the offer is made months (or potentially years) after the estate agent stopped marketing your property

³ To understand the difference between sole selling, sole agency and multiple agency contracts, see [Estate Agents' contracts: what to watch for](#), HomeOwners Alliance, 2013

Introduction – why are we investigating estate agent fee practices?

Our rationale for wanting to investigate estate agent fee practices is simple. Guidance on estate agent fees is the top reason for visits to our website and estate agent fees and contract terms frequently feature as a key concern for our members.

The fact that one of the most popular advice guides on our website is: “How much should I pay the estate agent?” suggests that independent information about estate agent fees is not readily available and sellers are seeking guidance and clearer information in this area.

This is reinforced by findings from HomeOwners Alliance research on the stresses of buying and selling a home that shows that estate agents are the least trusted profession in the property arena.⁴

Sadly, we have received many accounts of estate agents not being straightforward about their commission or contract terms.

Our stories suggest it is often home-sellers ‘in the know’ who manage to negotiate lower rates and fair contract terms.

We wanted to see how easy or difficult it was for a member of the public to find out what estate agents charge and what standard contract terms they offer.

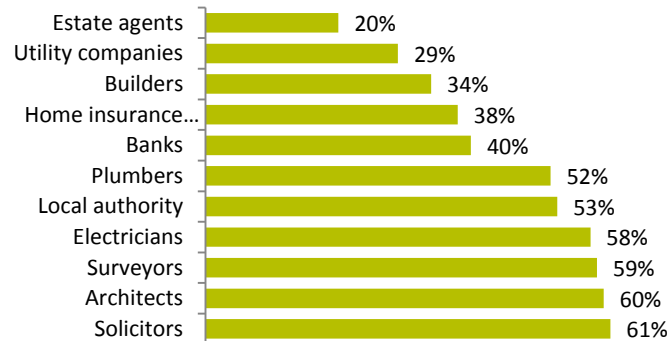
So we scoured estate agent websites in England and Wales for information about their fees, made telephone enquiries and have come to the conclusion that estate agents don’t openly compete on price, but they should. The wide variation of fees charged (from 1% - 2.5%) for essentially the same service shows it is not a competitive market. And this means that homeowners are paying higher prices than they need to.

A common homeowner story:

“I intend putting my house onto the market and asked 5 agents to tell me what their commission rates are and their terms of business, before I invite 3 for a valuation. One came back with 1.35% but no mention of VAT and no terms of business, 2nd and 3rd came back with “tell us where you live and we’ll visit and give you a ‘free’ valuation, 4th & 5th ? still waiting for them to reply, so not looking good.”



% of homeowners who trust each profession a great deal/fair amount



(Sample size: 1393 UK homeowners)

Source: HOA survey via YouGov omnibus, 2013

One homeowner unhappy with the level of service and progress with her sale was told to pay £250 for marketing if she wanted to terminate the contract and change estate agents



⁴ <http://hoa.org.uk/2013/07/who-do-you-trust-the-stresses-of-buying-and-owning-a-home/>

The Legal Framework – what estate agents are required to do

Although individual estate agents are not licensed or required to have any professional qualifications to work as an estate agent, all estate agencies must belong to an Office of Fair Trading redress scheme and comply with a set of standards. Just one of these standards is to inform any potential client in writing and before an agreement is reached, what fee (including VAT) is payable and when the fee is due.⁵

It is also mandatory for estate agents registered to The Property Ombudsman (TPO) to follow their Code of Practice for Residential Estate Agents. The code includes detailed provisions covering fair contracts, such as making clear the difference between ‘sole agency’ and ‘sole selling rights’ and that all fees and costs must be clearly stated in writing in their Terms of Business.

The Code is very clear on how VAT should be presented. Where the fee is a percentage, the estate agent should clearly state whether VAT is chargeable and must express it as an actual amount, based on the asking price (and not just a percentage). For fixed fees, the contract should state the actual amount to be paid including VAT.

Recent legislative changes has meant that estate agents are now bound by The Consumer Protection from Unfair Trading Regulations 2008, which state that price, including all taxes must be disclosed to the consumer in a timely manner and before the consumer takes a decision he or she would not have taken otherwise.

In our phone calls with estate agents and by reviewing the Terms of Business documents we received, only one estate agent quoted their fee as inclusive of VAT, and only one estate agent contract stated the actual fee to be paid, as opposed to a percentage. Of those that disclosed their fees on the phone, some of them needed to be prompted to stipulate whether VAT was included.

Methodology – How did we investigate estate agent fees?

To understand the perspective of those seeking to engage an estate agent and to understand estate agent fees and contract terms, the HomeOwners Alliance undertook to:

1. **Visit and review over 150 estate agent websites** to see if rates and business terms are readily published and easily accessible (websites drawn from England and Wales and included a mix of local independent estate agents and larger regional and national chains). On-line estate agents were not included in this study.
2. **Phone calls to a third of estate agent websites visited** (49 in total) to see if rates are readily made available at the initial point of enquiry and to see whether rates and contract terms are clearly and openly explained.



⁵ The Office of Fair Trading (OFT) has approved two schemes – The Property Ombudsman and The Ombudsman Service.

Table 1: Fieldwork Summary

	websites reviewed	telephone enquiries
Total number	166	49
By type of estate agent		
Independent agents	89	22
Regional/ national chains*	77	27
Regional breakdown		
North East	7	2
North West	17	6
Yorkshire & Humberside	17	4
Midlands	11	3
West Midlands	13	3
Wales	10	4
East Anglia	10	4
South East	10	4
South West	10	3
London – North	15	5
London – West/ Central	30	6
London – South	16	5
*estate agents with 4 or more branches		

Findings from review of estate agent websites

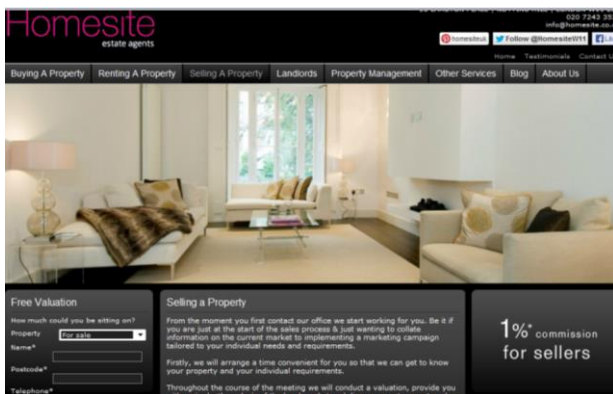
From our review of over 150 estate agent websites, it is clear there is a general absence of published fees and contract terms:

- 82% of estate agent websites have no reference to their fees or contract terms at all
- 16% of estate agent websites make only a general reference to their approach to fees
- Only 2% of websites specifically list their commission rate or fees

Table2 shows that although independent agents are more likely to mention fees than larger regional or national chains, it is not currently the norm for the professional estate agent to openly discuss fees.

Table 2: Website review research

	Total	No mention of fees	Some reference to fees	Specific listing of fees/ rates
Number of websites visited	166	137	26	3
By type of estate agent				
Independent agents	89	66	20	3
Regional/ national chains	77	71	6	0
Regional breakdown				
North East	7	7	0	0
North West	17	13	4	0
Yorkshire & Humberside	17	13	3	1
Midlands	11	8	3	0
West Midlands	13	8	5	0
Wales	10	6	4	0
East Anglia	10	10	0	0
South East	10	9	1	0
South West	10	10	0	0
London – North	15	13	1	1
London – West/ Central	30	25	4	1
London – South	16	15	1	0



3 sites out of 166 quoted a specific fee or commission rate

Independent estate agents vs regional/ national chains

Smaller independents, who aim to be more competitive on fees than larger chains, are more likely to make some reference to fees and business terms on their website.

Even so, fees tend to be referenced in broad terms rather than citing specific rates:

- “Competitive fees”
- “Competitive commission rates”
- “Some of the most competitive fees in the area”
- “No sale, no fee”
- “No sale, no fee promise”
- “No withdrawal fees”



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Flexible enough to meet the needs of individual clients, and

None of these larger estate agents have any reference to fees for selling residential properties on their websites⁶:

Acorn	Dawsons	Ludlow Thompson
Andrew Craig	Dixons	Mann Countrywide
Anscombe & Ringland	Douglas Allen ⁷	Marsh & Parsons
Bairstow Eves	Faron Sutaria	Pattisons
Barnard Marcus	Fox & Sons	Reeds Rains
Bridgfords	Foxton's	Rook Matthews
Carter Jonas	Fulfords	Savills
Century 21	George Proctor	Taylor's
Chard	Haarts	Thornley Groves
Chesterton Humberts	Hampton's	Whitegates
Churchill	Hunters	William H Brown
Connells	Kinleigh Folkhard Hayward	Winkworth
Countrywide	Lanford Russell	Your Move

⁶ In December 2013, when the review of websites was undertaken

⁷ Since our review of websites, this estate agent has been promoting “sale by tender”, where the seller is charged £150+VAT and the buyer a 2% ‘introduction fee’

No mention of negotiable/ flexible fees

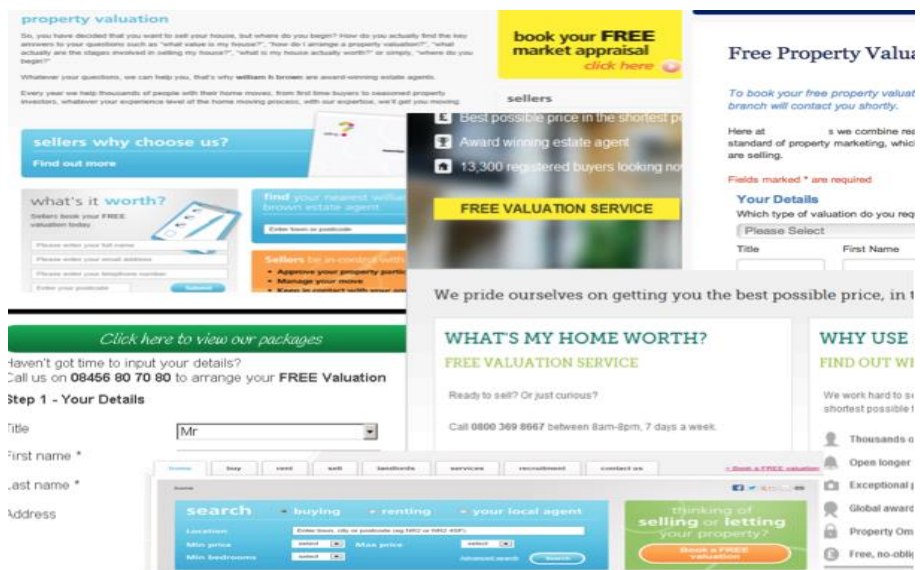
We know from our telephone enquiries that most estate agents are willing to be flexible on their commission rates and contract terms, particularly in markets where there is a shortage of housing supply but few agents, if any, mention this on their websites.



Estate agents provide many reasons to be the agent of choice – with no mention at all of rates

Many estate agent websites focus on 'free valuation' rather than on fees

The preferred route for estate agents to discuss fees is to begin first with an in-person valuation.



Estate agents prompt sellers to "get in touch" or "get the process started" by booking their free valuation now (left). This involves entering your name and address to arrange a visit to the property – before any mention of fees or contract terms.

Though agents may go so far as to recognise that fees are a commonly asked question by sellers, they tend not to provide detail of their commission rates on their website.

Frequently Asked Questions from sellers

[How much will it cost to sell my property?](#)

[Are there any additional marketing costs?](#)

[Where are my Title Deeds?](#)

[Do I need to redecorate before I put my property on the market?](#)

[Who will conduct viewings on my property and when will they occur?](#)

[Do I need to be present for viewings?](#)

[If I accept an offer will my property still be viewed?](#)

[Do I have to pay Stamp Duty?](#)

[When do I have to move out?](#)

How much will it cost to sell my property?

The costs involved in selling your property consist of:

Energy Performance Certificate

It is a legal requirement to have commissioned an EPC before marketing can start. Foxtons can organise this legally required document on your behalf at a cost of £75 + VAT.

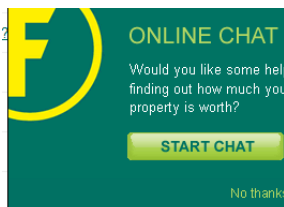
Estate agent commission

Commission fees become payable once your estate agent sells your property and contracts are signed. This is charged as a percentage of the sale price + VAT.

Legal fees for the conveyancing process

These vary depending on the solicitor you choose.

Nor does commission information tend to be provided via online web chat facilities



Welcome to Foxtons, one of our property experts will be with you shortly...You are now connected to our live chat.

Thomas: Hi, you're chatting to Thomas. What brings you to the website today?

Caroline: Hi there, I was checking out your FAQs on how much it will cost to sell my property. I wanted to get a ballpark of your commission rates

Thomas: Where about's is your property Caroline?

Caroline: It is 2 bdm flat on Campden Hill Gardens, Notting Hill, London

Thomas: I'm not in sales myself Caroline & this will be covered by our Notting Hill Gate office. Could I get a member of our sales team to contact you & discuss?

Caroline: That's ok, I just was browsing and doing some research, comparing a few agents today. just thought I might be able to get a quick answer using your chat facility. I can give the branch a call, thanks

Thomas: Their number is xxxx if you want to give them a quick call & someone there will be able to assist you

Findings from mystery shopping phone calls

There is a general reluctance to discuss fees and business terms over the phone – most agents push to do an in-person valuation before disclosing fees or terms:

- Approximately two out of every three agents (31 out of 49) push to do an in-home valuation first before providing any information about their fees or business terms
- When asked directly about fees, one in three (17 out of 49) refuse to give out rates over the phone
- Independent agents tend to be more up-front about fees (19 out of the 22 independent agents would discuss fees at the initial point of enquiry)
- Regional/ national chains often avoid discussing fees over the phone or only permit these discussions with senior negotiators (less than half would discuss fees over the phone)
- Enquiries uncover what we consider to be unfair practices among several agents (8 of 49 enquiries)

Table 3: Phone call findings					
	Total # of phone calls	# push valuation first	# open to giving out rates	# resistant to giving out rates	# with unusual practices
Total calls to estate agents	49	31	32	17	8
By type of agent					
Independent agents	22	*	19	3	4
Regional/ national chain	27	*	13	14	4
By region					
North East	2	2	2	0	
North West	6	4	3	3	
Yorkshire	4	4	1	3	
Midlands	3	1	2	1	2
West Midlands	3	1	2	1	2
Wales	4	3	2	2	2
East Anglia	4	0	4	0	0
South East	4	2	4	0	
South West	3	3	2	1	
London – North	5	3	5	0	2
London – Central/ West	6	3	3	3	
London - South	5	5	2	3	

Hiding behind the valuation – agents reluctant to discuss fees

For some agents, more often larger chains, it is their policy not to give fees or terms over the phone:

The manager would need to come out and look at the property. I can't actually give fees out over the phone I'm afraid.
(Can't even give a ballpark?)

I don't know what your house is valued at. We need to come and look at the property and discuss the fee
(Do you have a range?)

We in the office don't get given a range, it's the managers that have to come out and discuss the fees.
(Ok, what sort of contract do you offer?)

No sale no fee.
(Any up-front costs?)

There is your EPC but the manager will discuss all that with you on the appointment.
(I'm just short-listing a few agents...so you just don't give fees out over the phone?)

No we don't

In some cases, those answering the phone are valuation bookers, not sales negotiators, and they are not empowered to transfer calls or deviate from the valuation booking script. If they do pass on the call to someone with more authority, that person also cannot disclose any further information and continues to push to view the property.

(Hello, I just wanted to get an idea of your fees, commission rates and contract terms)
"We don't really discuss fees and stuff like that over the phone, what I could do is arrange for my valuer to come around and have a chat with you about that.

(I'm getting a short list together and wondered if you could give me a ballpark or range)
Don't really quote fees over the phone to be honest. If you want I could just take some details from you and my colleague could come down and give you everything you need.

(Are there any additional charges?)
I'll have a look for you, bear with me one second. Hello, yes, no there's nothing like that but when we do come out, we'll break everything out so you would know exactly what you are paying for and what everything would be.

(Do you know what your standard contract terms are?)
I believe it would be eh.... because I'm not really the valuer, I can't really advise you on that because I don't want to give you any wrong information."

The approach is to 'hard sell' the valuation, even among "award-winning estate agents":

"The valuer would be able to run through the services we provide, the charges and obviously the value of the property itself

(just trying to draw up a short list)
Have you been on all agents.com because we have been voted the top agent in our area

(but couldn't find was anything about your fees, rates or contract terms)
They are flexible...the best idea would be to speak to the valuer

(any additional charges?)
Only additional thing would be the Energy Performance Certificate.

(What's the tie-in period?)
It is 12 weeks but there is also no sale, no fee. The valuer would be able to come out and give you a free valuation and it is under no obligation."

It can be intimidating trying to get an idea of estate agent fees and business terms over the phone. The hard-sell to book a valuation is also carried out by sales negotiators, who claim it is not possible to give an idea of fees over the phone and that it would even be unprofessional to do so.

"To be honest with you I really don't like doing it over the phone. It would be far better if I came down and met with you face to face had a chat with you and a bit about our services. We do offer different marketing plans as well. It's far more professional to talk to you face to face.

(I'm just getting short list together, what are your different marketing plans?)
We have a sole agency agreement or multiple agency agreement, do a lot of different things that other agents don't do. It would be much better to sit down with you and discuss with you. The way the market is at the moment, it's very buoyant and properties are selling for very good prices and there is a little bit of flexibility on our fees. I'd really like to look at the property first

(why is it so important to see the value of my property for fees?)
Can see how saleable it is and how quickly we can sell the property... don't want to just give you our fee and have you choose an agent purely on the fee.

(noticed on your website you say you don't have hefty charges)
We are flexible, we sell a lot of properties and we achieve good prices...we do offer flexibility. "

Chain of command – controlling discussion of fees & terms

Some agents will only give out fees and terms over the phone if you speak to a manager or valuer. Sales negotiators are not always permitted to discuss specifics.

(just trying to get an idea of your fees, contract terms and services..notice you mention you have a transparent fee structure on your website, wanted to find out more)

“The best person to actually talk to is the valuer. He’ll have to phone you back as he’s on the phone.

(Could I call back, who should I ask for?)

You can speak to the manager here when you call back.

(and you are a valuer are you?)

No, I’m one of the sales negotiators here

(and you can’t discuss fees with me?)

They are all uniquely done based on the property rather than tarring everyone with the same brush in terms of fee and contract they are tailored to the property. It’s a more honest approach

(what is tailoring based on?)

the type of property, the type of marketing undertaken, what you need from us, main factor is the property itself

(if I give you information about the property, are you able to help or do I need to speak to the valuer?)

... you need to speak to valuer I’m afraid, I can get him to give you a call.”

However, once through to ‘authorised personnel’, agents tend to be open and direct about fees.

(Hi I’m just getting a feel for what different agents in the area offer in terms of commission rates, your contract terms and services)

“You could speak to my manager. Honestly I’m not authorised to discuss the commission and everything. He is on the line but can call you back in five minutes (takes details).

(Manager calls)

All of it is negotiable. Our multi agency is the only rate that is not negotiable. If you contact alot of estate agents, none of us will recommend multi-agency. It is slightly more expensive 3%. Our sole agency fee is 2.5%. I’m aware the market is very competitive and I’m not going to lose instruction over fee so we can always talk it over when we come to see the flat, see what the property is like, see if you like us firstly

(Any tie in period?)

Our contract length is written out at 15 weeks but again we don’t always stick to that... We can talk about 6 weeks if that makes you more comfortable.

(Any additional costs?).

When you sell, you pay estate agent fees and solicitor fees. Estate agent fees are only due if we sell the flat, a government requirement is that you get something called an energy performance certificate which will cost between £80 and £150 and we can do it for you for about £100 but you can get surveyors online to do it for you cheaper. That’s the only up-front cost and that’s the same for whichever estate agent you choose. If we do all the marketing, floor plans, there is no cost unless we actually sell it, if you withdraw or don’t sell or for whatever reason decide not to sell it, there’s no cost”

Or they are open and honest by the end of the conversation.

(Asked about ballpark figure for fees)

"The terms and fees are set by the estate agent group and not us. So they are exactly the same across all branches. At the branch level, we have the ability to negotiate on length of contract, we could do either sole agency or multiple agency. It makes no difference to us.

(after answering questions about the property and location)

"I would negotiate with you. How many weeks do you want? At the peak of the market we used 12-14 weeks contracts. Last year when the market was slow, I was doing 24 week contracts. I'm willing to negotiate and am happy to do 16 weeks. Written notification to terminate can range from 14-28 days, we can do 14 days, we can allow you to notify to terminate within the term, so can give us 16 weeks.

on our fee our set rate is 2% but we know we need to negotiate. To negotiate I need to see the house.

Agents open to discussing fees & business terms

Two out of three agents (32 out of 49), were prepared to give an idea of their standard fees and business terms at the initial point of contact and, those that do, on the whole give a positive impression – of being sensitive to the interests of the potential client; open and trustworthy.

"It's no sale no fee so the only up-front cost would be for an energy performance certificate which is a legal requirement nowadays. The company we use charges £55 + VAT but if you want to sort that out yourself, that's fine, that's entirely up to you. Our standard fee is 1% + VAT, 1% of the sale price, whatever price is agreed that goes through.... There are no additional fees for advertising or anything like that."

On balance, smaller, independent agents tend to be more receptive to discussing fees and contract terms at the initial point of enquiry – providing clear and straightforward details.

"We're not an agent that has any contract for people to sign. We have been in business for over 40 years. We're a family business, we've just never worked with contracts. Our commission is never higher than 1% +VAT on the final price that we sell it at and it can be a bit lower than the 1% depending on what size of property you have, what type of price it'll be worth. No sale no fee. The only thing you need to pay for up front is the energy performance certificate. We organise it all, have a gentleman who can come around, you pay him. It's £50, there's no VAT on that. That's the only up-front cost you'll have to pay. Everything else is paid when the sale is completed. All our fees include the advertising. Our fees are paid once completion has taken place.

(Why no contract)

We've never worked like that. In all the years we've been in business we understand you're not selling a car, it's your home, and if you want to take it off the market for whatever reason we want people to feel they can do that.... All we ask is for 2 week written notice to get adverts down and so on."

In another example, the sales manager of a national chain proactively offered to email a copy of their standard fees and contract terms.

“Our commission rate is sole agency 2.5% and our multiple agency rate is 3%. These are our fees, our fees don’t change.

(don’t negotiate at all?) It’s not about the commission we charge, it’s about what you achieve. We sell more. You will be able to negotiate with other agents.

(any other costs?) No – none at all – do you want me to send you a copy of my sales terms, it is one page, if you want to read them over.”

Rationale for not publicising fees

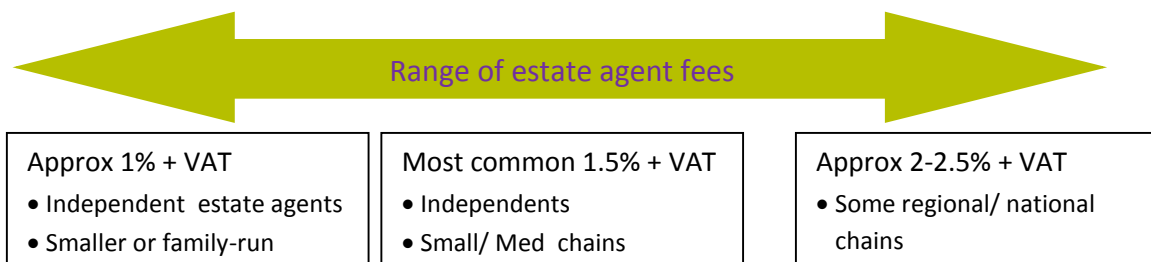
The main rationale for not giving out fees is that agents tend not to have a standard fixed fee:

- Many state that the property value and demand for the type of property impacts on the fee
- Most agents say that their fee is flexible and want the opportunity to match competitor fees/ terms; particularly in competitive markets and in buoyant markets (like London) where agents have plenty of keen buyers but not enough stock
- Some agents are also concerned that the seller’s decision will be based solely on fees

(why don’t you publish fees on your website?) “Because it is not a standard fixed fee. There is a lot of competition. I haven’t noticed any agents who put their fees on the website purely because they would prefer to have the opportunity to discuss that with someone. If an agent was going to lose the job based on someone under-cutting them on fees, I think the agent would prefer to be given the opportunity to explain why their fee is a bit more or negotiate. A lot of it is negotiable and a lot of it does come down to the value of the property as well. A lot of agents have a minimum fee of £1500 so if it is a cheaper property then it might not be 1%.”

Typical estate agent fees

From the agents willing to disclose their typical sole agency commission rate, the range of fees span from 1% + VAT (or slightly under) up to 2.5% + VAT. On balance, fees tend to be lower among smaller, independents than among larger, regional chains. The most common standard fee quoted is 1.5% + VAT (before negotiation).



Negotiable fees

It is clear that the vast majority of agents are willing to negotiate on their fee. Most agents say the fee is flexible, that it does depend on the property/ valuation but that they do not want to lose an instruction because of the fee.

"Between you and me, get our valuer out to your property, and then barter. We won't lose a property on fee."

Impact of a buoyant market – seller's market

Particularly in London and surrounding areas, willingness of agents to be flexible or negotiate on fees and length of contract is most apparent since demand is high and there is a shortage of property to sell at the moment.

"We don't hold any standard fees for anyone as you may or may not know that the market right now is so good that we have so many applicants in our books that are willing to pay so we are not willing to lose an instruction over a fee. In terms of contracts, in such a competitive market right now we don't hold anyone into an exclusivity period so if you decide to be with us for 2 weeks, 3 weeks, 3 months as long as you are happy with us, you are more than welcome to stay. If you want to try out a different agent in that time, we would of course allow you to do so. The straight answer is we are very, very flexible. We don't have a standard fee and we will try to be as competitive as possible."

Alternative fee structures

Some agents are offering alternatives to a commission-based fee:

- Fixed fee (rather than %) – agents say some sellers prefer this so they know exactly what fee they will pay. The down-side can be that agents are not motivated to achieve the highest selling price possible. Fixed fees seem more common for lower-end priced properties.
- Tiered fee/ sliding fee based on achieved sale price.
- Sliding fee based on time taken to achieve sale (speed of sale).
- Option of a fixed fee to advertise on the property portal sites.
- Charging a small fixed amount (£150+VAT) to the seller and requiring the successful buyer to pay the estate agent's commission, usually around 2%.

"We can have a fixed fee, so for instance, you may come in and say I'm happy to offer 1.3% fixed or some clients now like a sliding fee. Some clients like option of a base fee if we get to a certain level, the fee is for instance 1.3%. If we get above a certain agreed price there is a % uplift in the fee on that basis so it's performance related. It also means that we need to get a better result for you to justify the slight uplift in the fee."

"We did a deal the other day. The property was marketed at £375k, we asked the vendor if we could have a staggered fee if we achieved higher than that. We actually achieved £475k so received a higher commission rate on the entire amount. Some clients like a flat fee eg £12k +VAT, on a property priced at £800k but a fixed fee might not do you any favours if the agent is not working as hard as you like. We are sales people, we like to be motivated."

Additional fees – unfair practices

Most agents operate on a no sale, no fee basis, with no withdrawal fees and the commission payable on the agreed sale price once contracts are exchanged or upon completion.

- Most agents pointed out that the only up-front cost to be aware of is the energy performance certificate (EPC), now a legal requirement – most can arrange this for customers (with a fee). Although many agents make customers aware that they are not obligated to use their provider, fewer agents make it clear that a previous EPC may be valid if the property is new or has recently been sold.

However, there are instances of unfair up-front charges:

- £500 if the seller pulls out of the sale
- £99 non-refundable registration fee
- Extra costs for Premium Rightmove listing (£400)

Communicating VAT

Agents are required by the Consumer Protection Regulations 2008 (CPU) to clearly state whether or not fees are inclusive or exclusive of VAT and early enough in the decision making process for the consumer to act on. Legal obligations aside, this is key information to communicate to potential customers as VAT adds a significant amount to the final bill and there are instances of sellers not finding out about the addition of VAT until they are on the point of signing a contract with their chosen agent. All products and some everyday services are inclusive of VAT, so it is unreasonable to assume that customers know that VAT will be extra.

Of the 33 agents that gave rates out over the phone, all except one expressed their fee as excluding VAT.

'our standard fee is usually 1.5% of final purchase price. That pretty much includes everything, the marketing materials, the professional photography, the portals.

(other costs?)

'if you haven't got a valid EPC certificate, this will cost £95 and will last 10 years that will be the only additional thing that is payable by yourself.

(VAT?)

our fees are inclusive of VAT and the EPC too"

Some agents, clearly explain whether or not VAT is additional without any need for prompting:

"1.25% + VAT of the agreed sale price, no sale no fee, 28 days written notice, we only do sole agency, rates are negotiable but average rate is 1.25% +VAT, just your Energy Performance Certificate, a legal requirement, any agent needs in order to legally market it. You can get one done if you know someone who can do it, otherwise we can do it through a company we use and it is £78+ VAT."

Some agents are not in the habit of giving rates out over the phone, but in some cases, we managed to get a rough idea or ballpark figure of their rates – in this instance, VAT is not mentioned.

Approximately half of agents open with their fees do not mention up-front whether fees include/exclude VAT. When prompted, these agents are forthcoming. While these agents are not necessarily 'hiding' VAT as an extra cost, they should be clear about VAT whenever quoting fees.

Table 4: How estate agents handled VAT			
Total # of agents that gave rates out	VAT stated (without prompting)	VAT required prompting	Rate given as rough ballpark/ no VAT
33	11	16	6

Contract terms – length of sole agency tie-in period

No agent recommended a multiple agent listing (and some agents only offer sole agency contracts) because agents tend to use similar advertising vehicles, so there is no real up-lift in terms of exposure and the commission rate is less advantageous.

The aspect that varies the most between agents is the length of the standard sole agency contract tie-in period. From 2 weeks up to a staggering 20 weeks. The most common minimum sole agency contract period tends to either be 4 weeks (30 days) or 12 weeks.

- In London and surrounding areas, where there is a shortage of properties to sell, there is a willingness to also be flexible on the contract term – most would not take the contract for less than 3-4 weeks but many are willing to slash their standard sole agency term.

“Our standard contract is 12 weeks but because the market is so buoyant, we’re doing a 2 week notice period only at the moment.”

Questionable practices with fees & contract terms

There continue to be estate agents with business practices/ contracts which we consider to be unfair:


- Up-front additional fees, eg non-refundable registration fee of £99, premium Rightmove listings (£400). There is also a cash back scheme for using in-house conveyancers.
- Members of the public have contacted the HomeOwners Alliance to report cases of estate agents having hand scribbled extra charges on their contract – eg a £200 ‘marketing fee incentive’ which is only returned in the event of a completed sale
- In another contract we found, the seller will still have to pay the full commission (minimum of £1500+VAT) if the purchaser exchanges but doesn’t complete.

Where a purchaser exchanges contracts but fails to complete the purchase, we shall be paid our commission out of the deposit monies held by your legal representatives, within seven days of the contracted completion date.

- Other vendors have come to us for help when they discover the contract they signed and want to terminate includes not only a notice period but entitles the original estate agent to commission if they can argue that a future buyer was “introduced” by the original estate agent and with no time limit.
- We have also been informed of instances where the time period during which the original agent may claim commission is not clearly set out in the contract.
- Some agents do not make it clear that they offer ‘sole selling rights’ rather than a ‘sole agency’ contract meaning the estate agent in the contract is the only one allowed to sell your home during the period stipulated. You will have to pay that estate agent, even if you find your own buyer. Some contracts use ‘sole selling’ and ‘sole agency’ rights interchangeably.
- Some agents charge withdrawal fees: an agent in the Midlands charges £500 if the seller withdraws from the sale. Another estate agent in Coventry charge withdrawal fees if the contract is cancelled within first seven days (to cover their work already completed).
- One estate agent offered – 0% commission for first 50 houses sold within 12 weeks which may sound too good to be true. But they operated a standard 20 week tie in period and would not give out the rates payable after the expiry of the promotional period. Their sole selling rights contract also included a marketing withdrawal fee and permitted them to charge commission up to 6 months after the end of the contracted period for any buyer deemed to have been introduced by them.

Vendor story:

“We put a house on the market in 2008 This never sold. We took it off after a sale fell through (interested buyers did not have money to purchase.) We were struggling financially and rented out property so advertised this ourselves. The same couple approached us so we rented it to them for over a year. They went on to purchase the property in April 2010. We received a letter from the estate agents in 2013 saying we owe them £2000 for finding the buyer!



COMMISSION FEE ENTITLEMENT

The commission fee will be earned by us if we introduce, directly or indirectly a person who contracts to purchase the property during the period of the contract. The Agent has a specific entitlement to a fee if: The property is sold to a family member; One of the owners buys another owners share (eg as part of a separation agreement); The property is sold to a Property Developer; The property is part exchanged; The property is sold at auction or is repossessed; The Agent finds a Ready, Willing and Able Buyer and the seller withdraws for any reason after contracts are exchanged.

We will have a commission fee entitlement if you terminate our agreement and then sell your property to a buyer introduced by us within six months of the date our agreement ends. However we give up that right to a commission if a buyer introduced by us goes on to buy the property through another estate Agent, where the buyer is introduced to you by the other estate Agent more than six months after our agreement ended. If no other estate Agent is involved, this time limit will not apply.

- Some agents have a lengthy tie-in period of 20 weeks and may require an additional notice period which can only be given at the end of the 20 weeks. For example, this contract requires another 28 days written notice at the end of the 20 weeks.

Our initial period of sole agency is 20 weeks with a further 28 days period of written notice to withdraw. You will be liable to pay us our agreed fee when unconditional Contracts for the sale of the property are exchanged with a purchaser introduced by ourselves, directly or indirectly or where we have entered into negotiations on your behalf resulting in a subsequent sale. To comply with current money laundering legislation we will require sight of two forms of identification, i.e. passport or photo driving licence and a utility bill.

- One estate agent collects fees from both the buyer and the seller, which creates an additional unexpected cost for the buyer and muddies the waters as to who the agent represents. Called 'sale by tender', the agent charges the seller a nominal fixed amount (£150+VAT) and the buyer an 'introduction fee' of 2%+VAT in this case.

An introduction fee of 2% + VAT of the contracted sale price or £2,000.00 + VAT (whichever is greater) will be payable if the tender bid is accepted and a sale results at any time. This fee becomes due for payment on exchange of contracts. The total fee will be confirmed in our memorandum of sale and must be lodged with the purchaser's solicitor prior to exchange of contracts and settled by the purchaser's solicitor within 10 days of completion of the sale. Interest may be charged at 3% per annum above Barclays Bank base rate if the account remains unpaid after this time.

Savvy shoppers negotiate better rates

Experience from our telephone enquiries and member feedback tells us that shopping around and asking questions about fees and terms often results in a better deal. In some areas, there is heavy competition between estate agents to secure instructions as they are desperate for housing stock. In these areas, there seems a general appetite to be flexible on commission and sole agency tie-in period and most agents do not want to lose an instruction because of the fee or contract term.

Member story:

"When we put our house on the market, I sent an enquiry to local agents asking for their terms and conditions, together with their fees. None disclosed their fees and only two sent copies of their terms and conditions. In pursuing these I quickly sorted the 'wheat from the chaff'. I proposed changes to their fees and structured them on a scale. If they found a buyer within 4 weeks at our top acceptable price, they got the full fee we agreed. For every 4 week delay their fee was reduced (max 16 week period). Additionally, if they did not achieve our ideal 'top' price then their fee again reduced by a percentage for every £5k drop. The agents found a buyer within 8 weeks at our top acceptable price. Nothing like a money incentive to get them to work for their money. If you don't ask then you don't get"



Conclusion

We believe that greater transparency of estate agent fees and business terms is needed:

- A tiny minority (2%) publish their commission rates on their website
- One in three agents will not give rates or terms out over the phone
- More than half of larger, regional or national chains refuse to discuss fees and business terms over the phone
- Among larger agents often the dissemination of fee information is carefully controlled – only managers or valuers are permitted to discuss fees
- Valuations are being used as the excuse for a lack of transparency about fees. Despite the fact that there are a number of freely available resources to check the value of your property, agents hide behind the valuation as the reason for not disclosing fees over the telephone and use this as a mechanism for a face-to-face sales visit
 - Websites are awash with free, no obligation valuation booking features
 - Many agents have call handlers whose job it is to book valuations
- Agents are not consistently communicating whether fees include or exclude VAT. This is a legal requirement and fair practice.
- Sole agency tie-in periods vary dramatically and some contract lengths are unreasonable (20 weeks, with 28 days written notification).
- We consider the following to be sharp business practices and vendors should be warned about them:
 - Additional registration, marketing or advertising fees (these should be covered by the estate agent commission/ fee)
 - Withdrawal fees if the vendor decides to take their home off the market
 - Sole selling rights contracts as opposed to sole agency contracts
 - Fees for introductions that extend beyond the sole agency contract period
- It is important that vendors shop around as rates and contract terms are often negotiable. Professional, honest agents will:
 - Be up-front about standard fees and the length of contract terms and whether or not VAT is included
 - Operate on a no sale, no fee basis, with no additional charges and no withdrawal fees
 - Will offer a sole agency (not sole selling rights) contract
 - Will have a fair contract period and notice period (4-6 weeks)
 - Will not hold you to introducer fees beyond the sole agency contract period
 - Will clearly state when fees are incurred and due (usually at point when contracts exchange or upon completion).

- Those who offer in-house services such as energy performance certificates, arranging mortgages or conveyancing should make it clear there is no obligation to use them as a provider and they should clearly state if they are receiving commission.