



BRIEF ENCOUNTER

Which estate agent gets our commission?

Q We are currently in dispute with a local estate agent after we left and went to another firm. A person inquired about our property when we were with the first agent, but he later came back and made an offer to buy through the second one. Who do we pay the commission to?

A The general rule is that you have to pay an estate agent only if the agent is the “effective cause” of a sale of the property. Although you can, in theory, agree to pay commission in other circumstances, the courts are loath to depart from this principle. For example, it does not matter whether the agreement says that the commission is paid when the agent will “find” you a buyer or whether it says that the agent will simply “introduce” one.

In the 1990 case of *Peter Yates v Bullock*, the Court of Appeal considered a

similar situation to yours. Mr and Mrs Bullock employed an estate agent, who introduced a buyer. The buyer withdrew and the Bullocks changed agents. The buyer then reappeared with another joint purchaser. The Bullocks decided to pay their commission to the second agents, but the first firm sued for its money.

The Court of Appeal held that the “effective cause” of the sale was the work done by the first agent, and although the court had a lot of sympathy with them, Mr and Mrs Bullock ended up paying two lots of commission.

You can avoid paying the first agent if the transaction you eventually enter into is of a wholly different nature from what was originally envisaged. However, the scope for this exception is very limited, and, as the *Bullock* case shows, you can end up paying commission even if you sell to people who are not exactly the same as the original buyer. The overwhelming likelihood is, therefore, that you will have to pay your commission to the first agent.
Mark Loveday

The writer is a barrister at Tanfield Chambers. E-mail your questions to: brief.encounter@thetimes.co.uk