

This article was written for the property supplement of The Irish Times for Thursday 12th June and we reproduce it here because there are serious implications for the sharing and use of property transaction data both by agents and valuers, which members should take careful note of.

AGENTS AND VALUERS IN AN INFORMATION VACUUM

By Alan Cooke, IAVI Chief Executive

The fallout of the National Consumer Agency's recent intervention in the controversy surrounding the publication of allegedly inaccurate private treaty sale prices became clear at a meeting held on Monday last in the College of Physicians.

The meeting, organised on the initiative of the IAVI, was also attended by representatives of the Department of the Environment, Heritage and Local Government, the Department of Enterprise, Trade and Employment, the National Consumer Agency, the Consumers' Association of Ireland, the National Property Services Regulatory Authority, Fine Gael, the Law Society, the Chartered Institute of Arbitrators, SCS, IPAV and IPFMA.

IAVI President Edward Carey and the IAVI Law Agent Imelda Reynolds of Beauchamps gave the 22 attendees an overview of the position in which estate agents and valuers find themselves based on a strict interpretation of current Irish Consumer and Data Protection law. A dichotomy exists in that if agents disclose sale prices that vary to a material degree from the actual price obtained they breach the Consumer Protection Act whereas, under the Data Protection Act, the publication of accurate figures is possible only with the consent of both parties to the transaction except for sales at auction, which represent a tiny fraction of all sales. It is recognised that such consent would rarely be forthcoming.

Those in the industry know that information on sales and rentals has to date been readily and necessarily shared between valuers and used as a base for valuations and also to provide comparative transaction evidence to judges, arbitrators and expert valuers entrusted with determining disputes related to property. Most lending institutions now demand that valuers provide comparative sales transactions in mortgage valuation reports and in most instances valuers will rely on others in gathering such information.

This information sharing comprises disclosure, albeit falling short of publication in a national newspaper. Therefore, with the possible exception of court cases,

the Data Protection Act is breached in all instances where a private individual has been a party to a transaction so divulged, unless that party's consent has been obtained by the valuer adducing the evidence.

The valuer cannot even be told the identity of the parties involved in private transactions in which he/she was not a negotiating party without further possible breaches of the data legislation. It can therefore be safely assumed that very little comparative evidence can be legally adduced, endangering the arbitration and independent determination processes for landlord and tenant cases, rent reviews and compulsory purchases under the National Development Plan. Local Authority valuers are equally affected by these restrictions. The implications, not alone for the property profession but for the economy, are stark and require urgent Government action.

Even where the parties to transactions are companies, a general requirement of client confidentiality imposes restrictions on agents and valuers sharing information without which the market cannot operate properly. As one participant at the meeting reflected, the market has operated successfully despite, rather than because of, existing legislation. It seems this must now change.

The matter arose out of an Irish Times report to the effect that some agents had reported inaccurate sale prices. The National Consumer Agency responded and IAVI and IPAV both agreed with the NCA that their members would no longer publish approximate sale prices. Despite some media reports to the contrary, there was no argument between the NCA and the professional bodies, which recognised the legitimacy of the NCA concerns. No professional body will countenance members publishing incorrect prices.

At Monday's meeting, IAVI sought a consensus to the effect that consumers and the economy would benefit if all sale prices were a matter of public record. No dissent from this view was expressed and there was unanimous recognition that data

legislation presents problems for the property industry which require urgent remedy.

Many European countries permit the publication of property sale prices as a matter of course and do not treat such information as confidential for the purposes of data protection legislation. It is believed therefore that EU legislation should not be a barrier to change in Ireland.

In his address to the meeting, IAVI President Edward Carey asked whether the current situation in Ireland properly reflects a sophisticated economy and whether the wishes of individuals involved in property transactions to keep the price secret should outweigh the benefit to consumers and the economy of greater transparency in a market which has been so frequently accused of the opposite.

The Data Protection Commissioner has offered to meet the four property bodies and this meeting will be scheduled as quickly as possible.

Possible solutions may include either an amendment to the Data Protection Act or the publication of a Regulation under Section 2 (A) 2 of that Act by the Minister for Justice, after consultation with the Data Protection Commissioner, which would effectively declassify property transaction data on the basis that "the processing of the information is necessary for the purpose of the legitimate interests pursued by the data controller or third party or parties to whom the data is disclosed". Any alleged Constitutional right to privacy may be legitimately limited or restricted by Government through legislation in the common good.

Government agencies are already provided with details of all property transactions, so this information should be declassified and a government agency (Land Registry, Valuation Office or Central Statistics Office) directed to collate and publish a national price register. Agents should also be permitted to publish accurate sale and rental figures without the consent of the parties involved. One thing is certain; doing nothing is not an option! ■