



Primary Authority Partnership

Warwickshire County Council Trading Standards

Old Budbrooke Road, Warwick, CV35 7DP

&

Propertymark

Arbon House, 6 Tournament Court, Edgehill Drive, Warwick, CV34 6LG

&

The Property Ombudsman

Milford House, 43 - 55 Milford Street, Salisbury, Wiltshire, SP1 2BP

Primary Authority Advice Reference WTS/PM/TPO/09

This Primary Authority Advice has been produced by Warwickshire County Council Trading Standards Service, in partnership with The Property Ombudsman and Propertymark, for use by member businesses as an aid to complying with the law. If you follow this advice correctly, your local Trading Standards Service should respect this and not ask you to comply with the law in a different way. If you are contacted by a local authority enforcement body, please inform them that you are a member of the scheme.

Advice requested:

Do the new cancellation regulations still apply when a chattels auctioneer collects items from the home of the owner, to sell in a chattels auction at another location?

Legislation considered:

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("CICAR")

Other Material considered:

BIS - Consumer Contracts (Information, Cancellation and Additional Charges) Regulations Implementing Guidance [December 2013] ("BIS Guidance")

CTSI Business Companion.info – Off premises Sales Guidance [2020] ("CTSI off premises Guidance")

Assured Advice Issued:

A chattels auctioneer will usually act as an agent for the consumer. They will enter chattels into an upcoming auction and can accept an offer to purchase, on behalf of the seller, from a bidder at auction.

The sale of any item at a public auction is exempt from the right to cancel (see CICAR regulation 28(1)(g) and the definition of public auction in regulation 5).

However, the agency contract that will exist between the consumer and the auctioneer (as agent) will be covered by the regulations. Depending on whether the contract is an off-premises, on-premises or distance contract, there may be a requirement to provide a right to cancel.

Some examples:

A - Consumer visits auctioneer's premises with chattels and agrees to form an agency contract for the auctioneer to sell the chattels. (On Premises Contract)

The auctioneer must provide all the information to the consumer in a clear and comprehensible manner, as required by regulation 9 and set out in Schedule 1 of CICAR, unless the information is already apparent from the context. There is no right to cancel.

B – Auctioneer visits consumer in their home to value chattels and consumer signs an agency contract at that time for the auctioneer to sell the chattels. (Off Premises Contract)

The agent must provide all the information as set out in schedule 2 of CICAR on paper, in a clear and comprehensible manner, as required by regulation 10, and must provide the cancellation form as set out in Part B of schedule 3. 14 days cancellation period starts on the following day after the day on which the contract was made.

C – Auctioneer visits consumer in their home to value chattels, leaves agency contract with the consumer and leaves the premises. The consumer then signs and either posts, emails, or hand delivers the contract back to the auctioneer at a later date.

The auctioneer must provide all the information to the consumer in a clear and comprehensible manner, as required by regulation 9 and set out in Schedule 1 of CICAR, unless the information is already apparent from the context. There is no right to cancel.

Note - If the consumer returned a contract to the auctioneer immediately (within one hour from the auctioneer leaving), then this would be considered an off-premises contract (cancellation rights would then apply).

D – Consumer visits auctioneer's website and uploads details of chattels for online valuation and then enters into agency agreement online. (Distance Contract).

The agent must provide all the information as set out in schedule 2 of CICAR, as required by regulation 13, and must provide the cancellation form as set out in Part B of schedule 3. 14 days cancellation period starts on the following day after the day on which the contract was made.

This advice covers the action of forming the contract between two parties. Any subsequent visit by the auctioneer's staff to pick up the chattels and take them to the auction would be considered as part of the service (i.e. fulfilling the contract).

Date Advice is Effective from (issue date): 15 12 2015

Last Review Date: 18 12 2020

Next Review Date: 17 12 2021

Primary Authority: Warwickshire County Council Trading Standards Service

Co-ordinators: The Property Ombudsman and Propertymark

Supporting Regulator: Not applicable

For Publication on the Primary Authority Register: Yes

Geographic Applicability: This advice applies throughout the United Kingdom.

Scope: This advice is applicable to all member businesses.

How to obtain up to date copies of this advice: Current copies of this advice may be obtained via the member organisations' websites:

www.tpos.co.uk/members/assured-advice/assured-advice-information

and

www.propertymark.co.uk/working-in-the-industry/primary-authority-advice/.