Primary Authority Partnership

Warwickshire County Council Trading Standards
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Primary Authority Advice Reference WTS/PM/TPO/02

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:

Is it possible to offer any guidance on time limits for how long a property may be described as 'new' or 'new instructions'?

Is there any guidance as to what 'new instructions' means, and would it include 'revised instructions'?

Legislation considered:

Consumer Protection from Unfair Trading Regulations 2008

Other Material considered:

Previous advice given by LACORS (as it then was) originally drafted in 1993 under the Property Misdescriptions Act, reviewed in 2009 following the introduction of the above Regulations.

National Trading Standards Guidance on Property Sales – Compliance with the Consumer Protection from Unfair Trading Regulations 2008 and Business Protection from Misleading Marketing Regulations 2008. [September 2015] ("NTS Guidance")

Assured Advice Issued:

'New instructions' should be interpreted as meaning new instructions to that estate agent. If existing instructions are amended, they are not 'new'; they are 'amended' or 'revised' instructions.

The terms 'new' and 'new on the market' would appear to be synonymous, and should only be used when the property concerned is in fact new to the market, and not when it is just new to that estate agent or subject to a new or revised instruction.

Any guidance on the length of time for which the description 'new instruction' is appropriate can only be very general. Material considerations such as the advertising medium, the buoyancy (or otherwise) of the market and the method of sale and perhaps even the nature of the 'average consumer' at whom the marketing in question is targeted will vary greatly and only the courts will be able to decide based on all the individual circumstances.

Use of the terms 'new instructions', 'new on the market', 'new price' etc, for a period not exceeding **one calendar month** is unlikely, in the general course of events, to be considered misleading.

Additionally if a property were removed from the market and then placed back onto the market, we would expect the property to be off the market completely for a minimum of six months, before the phrase 'new on the market' could be used.

Date Advice is Effective from (issue date): 10 03 2016

Last Review Date: 17 04 2020

Next Review Date: 16 04 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/.