

Primary Authority Partnership

Warwickshire County Council Trading Standards

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Primary Authority Advice Reference WTS/PM/TPO/19

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:

What are an agent's obligations under the CPRs once their contract to market a property has ended?

Legislation considered:

Consumer Protection from Unfair Trading Regulations 2008 (as amended) ("CPRs")

Other Material considered:

National Trading Standards Estate Agency Team Guidance on Property Sales, September 2015 ("NTS Guidance")

Assured Advice Issued:

Regulation 3(1) of the CPRs prohibits unfair commercial practices. Regulation 2 defines a commercial practice as:

'any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by a trader, which is directly connected with the promotion, sale or supply of a product to or from consumers, whether occurring before, during or after a commercial transaction (if any) in relation to a product'.

This suggests that even if an agent were no longer marketing a property, they would still have a duty not to engage in an unfair commercial practice if the property is still on sale to consumers (even if marketed by another).

An agent should not disclose any personal information to anyone that would breach the Data Protection Act, however questions about the property that was previously marketed would not be considered personal data.

When considering a request for information about a property previously marketed, the agent should consider if failure to disclose it would affect the consumer's transactional decision.

If the answer is yes, then the information should be divulged. An agent should not be criticised for telling the truth.

Example:

Agent A markets a property and is informed by a potential buyer, following a survey, that the property has subsidence. The agent informs the vendor that the marketing material must now be changed to reflect this material information.

The vendor removes the property from the market and three months later markets the property with Agent B. There is no mention of subsidence in the marketing material.

A new buyer is aware that the property was marketed previously by Agent A and approaches them to ask why the property was removed from the market. Agent A discloses the fact that at that time the property had subsidence.

Agent A is correct to release the information because the property is on sale to consumers, albeit with agent B, and omitting that material information would likely affect the buyer's transactional decision to proceed in purchasing the property.

Agent B could be committing an offence for omitting information relating to the subsidence unless they were unaware of it due to the act or default of the vendor who has hidden the fact, in which case the vendor commits the offence.

Date Advice is Effective from (issue date): 18 08 2016

Last Review Date: 15 08 2019

Next Review Date: 14 08 2020

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/.