

Primary Authority Partnership**Warwickshire County Council Trading Standards**

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Primary Authority Advice Reference WTS/PM/TPO/12

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 an unfair or undesirable practice to withhold from a vendor an offer that has been received from a prospective purchaser, if the purchaser does not use the services of an internal financial advisor?

Legislation considered:

Estate Agents Act 1979 (as amended) ("EAA")

Estate Agents (Undesirable Practices) (No 2) Order 1991 ("the order")

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

Other Material considered:

OFT Guidance – The Estate Agency Guide. [October 2008] ("OFT Guidance")

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

Assured Advice Issued:

The Order sets out in its Schedules certain practices that are designated undesirable, and can therefore constitute grounds for any estate agent engaging in them to be made the subject of a prohibition order – section 3(1)(d) of the Act. The following are included (among others) as undesirable practices:

It is an undesirable practice for an agent to discriminate against a prospective purchaser on the grounds that the purchaser will not be, or is unlikely to be, accepting services (Para 1, Sch 2 of the Order), for example arranging a mortgage through the in-house financial adviser.

It is an undesirable practice for an agent, knowingly or recklessly, orally or in writing, to misrepresent the existence or details of any offer, or the existence or status of any prospective purchaser (Para 1(a), Sch 3 of the Order). An example of this would be pretending that an offer from a prospective buyer has not been received, when it has.

It is an undesirable practice for an estate agent not to forward to his client promptly and in writing accurate details (other than those of a description which the client has indicated in writing he does not wish to receive) of any offer the estate agent has received from a prospective purchaser in respect of an interest in the land (Para 2, Sch 3 of the Order). (NB – Subject to an exemption relating to the customer diligence measures required by the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 – Para 2A).

The Order defines “forward” as dispatching a letter by hand, post or fax, and makes no reference to email (Para 3, Sch 3 of the Order). We understand that email is regularly used in practice, however to ensure compliance the agent should follow up an email by letter or fax.

“Offer” includes a conditional offer, but the agent need not forward to the client any offers which the client has already stated in writing they do not want to receive (para 3, Sch 3 of the Order).

The answer to the initial question is yes. If an agent were to withhold an offer from a prospective purchaser because they were not using the services of an internal financial advisor, this would constitute an undesirable practice.

It is also possible that failure to disclose information to the vendor will also constitute a “misleading omission”, contrary the CPRs (Reg 5).

It would therefore seem that such a practice could be considered both “unfair” and “undesirable”.

Date Advice is Effective from (issue date): 24 04 2017

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 in England and Wales.

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/.