

Primary Authority Partnership

Warwickshire County Council Trading Standards

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Primary Authority Advice Reference WTS/PM/TPO/07

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:

1. An agent is marketing a flat for sale or rent, and the picture in the marketing shows parking spaces nearby. Does the agent have to make clear that there are no specific spaces allocated to the flat and it is a first come, first served arrangement with parking?
2. There is a restrictive covenant on a property for sale, does the agent have to disclose this to potential purchasers?
3. Should an agent disclose any planning applications that affect the property or its views to potential purchasers / tenants?
4. A property for sale has Japanese Knotweed on its land, should I inform the potential purchaser?
5. The previous tenant in a property was electrocuted and died, do I need to disclose this to potential new tenants?

Legislation considered:

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

Wildlife & Countryside Act 1981 (as amended) (References to this legislation should be considered outside the ambit of Assured Advice).

General Product Safety Regulations 2005

Other Material considered:

National Trading Standards Estate and Letting Agency Team Guidance on Property Sales and Lettings, September 2015, Reviewed August 2020 (“*NTS Guidance*”)

Trento Sviluppo srl and another v Autorità Garante della Concorrenza e del Mercato (Case C-281/12), 19th December 2013

Office of Fair Trading v Purely Creative Ltd and others, [2011] EWHC 106 (Ch)
Government guidance on Japanese knotweed, giant hogweed and other invasive plants: www.gov.uk/guidance/prevent-the-spread-of-harmful-invasive-and-nonnative-plants

Assured Advice Issued:

The rule for agents is that they pass on all the material information that a potential purchaser or tenant needs to make their transactional decision, as failure to do this could be classed as a misleading omission.

From the case Office of Fair Trading v Purely Creative Ltd and others, the judge makes the following remarks: “in my judgment the key to understanding this paragraph is the concept of “need”. The question is not whether the omitted information would assist, or be relevant, but whether its provision is necessary to enable the average consumer to take an informed transactional decision”.

It is also worth mentioning that, following the Trento case above, ‘transactional decision’ can even include the decision whether or not to enter a shop.

1) An agent is marketing a flat for sale or rent, and the picture in the marketing shows parking spaces nearby. Does the agent have to make clear that there are no specific spaces allocated to the flat and it is a first come, first served arrangement with parking?

Showing a picture of a flat that showed parking spaces would be a ‘commercial practice’ containing information that would suggest that parking is available to the flat’s residents.

If the parking spaces were not available to the flat’s residents, we would expect a clear statement to that effect on marketing material. Failure to explain this could constitute a ‘misleading action’, contrary to the Regulations.

If the parking was available as a shared facility between all residents on the estate and spaces thus are not guaranteed, then we would expect a clear statement outlining this. Failure to disclose this might constitute a misleading omission.

We would suggest that agents should always be clear to prospective purchasers or tenants about what parking arrangements are in place for the property they are marketing, especially where photographs are presented that could mislead.

2) There is a restrictive covenant on a property for sale, does the agent have to disclose this to potential purchasers?

The Land Registry advice on restrictive covenants previously used in this advice is no longer available. The law relating to these can be complex, and is outside the remit of Trading Standards. We would therefore suggest advice be obtained from a property lawyer on such matters.

However, bearing in mind the legislation we do deal with, we would advise as follows:

- Where the agent is aware of a restrictive covenant that might to be important to prospective purchasers/tenants, this should be disclosed.
- Agents should also take steps to protect themselves from circumstances where such a covenant is not disclosed to them and they had no other ready way of finding out about it.

3) Should an agent disclose any planning applications that affect the property or its views to potential purchasers/tenants?

It is our opinion that both pending and approved planning applications that affect the main characteristics of the property will be material information. Planning applications and approvals are advertised locally by notices and are available to view at the local planning office (or even online).

We would expect an agent to perform this check before producing their marketing information. Following this, we would recommend that it is good practice for agents to encourage potential purchasers/tenants to carry out their own checks, or via their solicitor, before buying/renting a property.

If any further information was presented to the agent at a later date, and this was corroborated with the appropriate planning authorities, then the agent would be obliged to make this information known.

4) A property for sale has Japanese Knotweed on its land, should I inform the potential purchaser?

Japanese knotweed is a serious invasive plant. Planting it or causing it to grow in the wild can be an offence under section 14(2) of the Wildlife Act & Countryside 1981. It can also affect the ability to secure a mortgage on property. This is material information, so its presence should be disclosed.

5) The previous tenant in a property was electrocuted and died, do I need to disclose this to potential new tenants?

If the fatality resulted from a defect in the property's wiring, which has not been rectified, then it will be necessary to disclose this, as material information.

If the defect has been professionally rectified and is no longer present, the property is now safe; therefore it would no longer be considered material information the consumer needs to know.

Date Advice is Effective from (issue date): 14 05 2018

Last Review Date: 14 01 2021

Next Review Date: 13 01 2022

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/.