



## Primary Authority Partnerships

### Warwickshire County Council Trading Standards & National Federation of Property Professionals & The Property Ombudsman

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#### Primary Authority Advice

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#### **Advice requested:**

Is it misleading for a letting agent not to display tenant and landlord fees in their offices?

#### **Legislation considered:**

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

Business Protection from Misleading Marketing regulations 2008 (as amended) (“BPRs”)

Consumer Rights Act 2015 (“CRA”)

#### **Other Material considered:**

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

Improving the Private Rented Sector and Tackling Bad Practice, March 2015: DCLG (“DCLG Guidance”)

#### **Assured Advice Issued:**

Section 83 of the CRA requires letting agents to display their fees for tenants and landlords.

These must be displayed at each of the agent’s premises where people using or likely to use the agent’s services are seen face-to-face. The fees must be displayed in a place where such people are likely to see them. People should not need to ask to see the fees as the list should be clearly on view.

The fees must also be published on the agent’s website, if there is one.

It is considered good practice for agents to check that customers have seen the fees price list before they enter into any agreements or contracts.

The list of fees must include a description of each fee that enables people to understand what it relates to and how much it will be. In relation to fees payable by tenants, it should be clear whether each fee is per property or per tenant. Fees should be inclusive of VAT and any other taxes.

The fees that must be displayed are all those fees, charges or penalties payable to the agent by landlords or tenants for letting agency or property management work carried out by the agent in relation to assured tenancies.

Fees can be stated as an amount of money, or as the method of calculation (e.g. a percentage).

The list must be clear and comprehensive. Surcharges, hidden fees or vague expressions like 'admin fee' are not permitted.

The DCLG Guidance lists the following as examples:

- marketing the property;
- conducting viewings for a landlord;
- conducting tenant checks and credit references;
- drawing up a tenancy agreement;
- preparing a property inventory.

The following need not be included on the fees list (although rent / deposit are required on property particulars):

- rent payable to a landlord;
- a tenancy deposit taken as security against damage or violation of the tenancy agreement;
- any fees, charges or penalties which the letting agent receives from a landlord under a tenancy on behalf of another person.

In relation to residential properties in England, if the agent holds money on behalf of others, the list of fees should also state whether he is a member of a client money protection scheme. The list should also state the name of the redress scheme the agent is a member of.

Breach of the above requirements by a letting agent can result in the agent being issued with a penalty charge notice. The financial penalty imposed can be up to £5000 (CRA section 87(7)).

The Consumer Rights Act does not specify how the list of fees should be displayed, we recommend that agents use a poster no smaller than A4 in size, entitled 'FEES' that is displayed in a place that can be clearly seen by customers.

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Given the importance of the CRA requirements above, it would appear that details of landlord and tenant fees would constitute 'material information' for the purposes of the CPRs, and so failure to give it fully and comprehensively may also constitute a 'misleading omission' for the purposes of Regulation 6. This would apply to clients who are consumers or consumer landlords.

In relation to commercial clients, if the fee information is presented in a misleading manner an offence of publishing misleading advertising, contrary to Regulation 6 of the BPRs may be committed.

This advice only applies to England & Wales.

**Date Advice is Effective from:**

23 11 2015

**Reference and renewal:**

The reference for this advice is: WTS/NFOPP/TPOS/17

This advice shall be reviewed in 12 months from the issue date.