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Warwickshire County Council Trading Standards
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Primary Authority Advice Reference WTS/PM/TPO/39

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Advice requested:

How do the Consumer Protection from Unfair Trading Regulations apply to property viewings conducted via video? Such viewings may be live or pre-recorded, and may be conducted by an agent or by a vendor/landlord.

Legislation considered:

Consumer Protection from Unfair Trading Regulations 2008 (as amended)

Various Public Health legislation relating to Coronavirus (all references should not be considered as Assured Advice)

Various Data Protection legislation (all references should not be considered as Assured Advice)

Other Material considered:

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:

At the time of first writing this advice (April-May 2020), we were given to understand that properties could still be marketed, but there were obstacles to the conduct of physical viewings. The use of various methods of video viewing will, we imagine, continue to be of use after the coronavirus emergency, for example where a property is a long way from the viewer – although we would always recommend physically viewing where/when this can be done (according to the relevant social distancing guidance and precautionary measures).

The content of any video footage whether live or pre-recorded is likely to be considered a commercial practice (when produced or conducted by the agent) under the Consumer Protection from Unfair Trading Regulations 2008. A commercial practice is defined as follows:

“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.”

Representations made during any video footage would be subject to the same legal requirements of the Consumer Protection from Unfair Trading Regulations 2008 – this would include video footage, audio and any representations given by any person on the video (or voiceover).

An agent is required to take all reasonable precautions and exercise all due diligence to avoid the commission of such an offence by himself or any person under his control.

A video viewing should include all the information that a physical one would. Where it is conducted ‘live’, i.e. as a two-way conversation with the prospective purchaser/tenant, the latter will have the opportunity to ask questions and ask for things to be demonstrated, so that they may know they work, for example to see that the lights work, the toilet flushes, etc. We would further suggest starting the viewing from outside the property, to confirm that it does exist at the address given, to prevent false property scams.

In the case of a pre-recorded viewing, we would suggest that care is taken to ensure that as much as possible is demonstrated and shown, including bad points as well as good. No attempt should be made to hide any bad points, as this may constitute a ‘misleading omission’ – concealing material information that an average consumer would need in order to make a transactional decision. Also, be clear about sizes, dimensions, etc. If a room contains small furniture for example, make sure viewers are aware of this, as otherwise a false impression might be given.

The Propertymark Property Information Questionnaire (see Assured Advice 34) may be a useful prompt.

Pre-recorded videos should also be retained and reviewed by the agent. Agents should make reasonable checks to verify the truth and accuracy of any representations made. This is to ensure all reasonable precautions and due diligence to avoid the commission of any offences under the Consumer Protection from Unfair Trading Regulations 2008.

We would suggest that when people are given access to pre-recorded viewings, there is a warning to the effect that its contents were accurate (or believed to be accurate), at the time it was made, but there may have been changes since.

Sometimes it may be possible to provide viewers with copies of viewings, or they may even make their own recordings, for example if the remote viewing is conducted via Skype or other such technology. Providing copies of recordings may not always be possible – it would have to be subject to the wishes of the vendor, landlord, or other person whose information may be divulged, regard being paid to data protection legislation, security issues, etc. However, where it is possible, we would recommend it be done, and that this is recorded in the property file. A copy should also be retained by the agent where possible as well.

Where a video viewing is conducted by the vendor, landlord or other third party, then an agent should take steps firstly to impress upon the private 'lay' client the need for honesty and comprehensiveness, and secondly to make it clear to prospective purchasers/tenants that the agent cannot be held liable for things said by those beyond his control.

Date Advice is Effective from (issue date): 24 09 2020

Last Review Date: 24 09 2020

Next Review Date: 23 09 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 acting in a capacity of estate agent or letting agent.

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/.