

Primary Authority Partnership

Warwickshire County Council Trading Standards

Old Budbrooke Road, Warwick, CV35 7DP

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Propertymark

Arbon House, 6 Tournament Court, Edgehill Drive, Warwick, CV34 6LG

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The Property Ombudsman

Milford House, 43 - 55 Milford Street, Salisbury, Wiltshire, SP1 2BP

Primary Authority Advice Reference WTS/PM/TPO/27

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:

If selling a share in a property, can an agent charge commission on the value of the property itself or only on the price to be paid for the share in the property?

Legislation considered:

Estate Agents Act 1979 ("EAA")

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")

TPO Code of Practice for Residential Estate Agents (England, Wales and Northern Ireland), 1st June 2019

Assured Advice Issued:

Agents can determine their own fees for services provided, however section 18(2) of the EAA requires the agent to make it very clear exactly what remuneration the customer will or may be required to pay under the contract.

If the agent cannot provide a fixed price, then he should state clearly and unambiguously how it will be calculated.

Failure to give this information may mean not only that the contract, or the variation of it, is unenforceable without a court order, but also that the agent may have committed a misleading omission and/or a misleading action, which is an offence contrary to the CPRs.

Therefore, our opinion would be that an agent can choose to charge commission on either the value of the whole property itself, or only on the agreed price of the share that is sold, provided this is made clear to the customer before they enter into a contract.

It would be good practice to include an illustrative example for the consumer so that they fully understand their liability for fees before entering into the contract. For example:

- 1.2% (Inclusive of VAT) of the agreed selling price for the whole property. This would be a total charge of £2400, based on a £200,000 sale.
- 1.2% (Inclusive of VAT) of the agreed selling price for your share in the property. This would be a total charge of £1200, based on a 50% share of a £200,000 sale.

Note – The Property Ombudsman Code of Practice (clause 3C) states: “When you advertise for new business your fees should be shown inclusive of VAT alongside a statement confirming that VAT is included”.

If the price payable is calculated in an “unconventional” way, then we would recommend extra steps be taken to ensure that the customer is clear on what they will or might be liable to pay, before they enter into the contract.

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

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 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/.