



## 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:**

What are an agent's obligations under the CPRs once their contract to market a property has ended?

#### **Legislation considered:**

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")

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

Regulation 3(1) of the CPRs prohibits unfair commercial practices. Regulation 2 defines a commercial practice as:

*'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'.*

This suggests that even if an agent were no longer marketing a property, they would still have a duty not to engage in an unfair commercial practice if the property is still on sale to consumers (even if marketed by another).

An agent should not disclose any personal information to anyone that would breach the Data Protection Act, however questions about the property that was previously marketed would not be considered personal data.

When considering a request for information about a property previously marketed, the agent should consider if failure to disclose it would affect the consumer's transactional decision.

If the answer is yes, then the information should be divulged. An agent should not be criticised for telling the truth.

Example:

Agent A markets a property and is informed by a potential buyer, following a survey, that the property has subsidence. The agent informs the vendor that the marketing material must now be changed to reflect this material information.

The vendor removes the property from the market and three months later markets the property with Agent B. There is no mention of subsidence in the marketing material.

A new buyer is aware that the property was marketed previously by Agent A and approaches them to ask why the property was removed from the market. Agent A discloses the fact that at that time the property had subsidence.

Agent A is correct to release the information because the property is on sale to consumers, albeit with agent B, and omitting that material information would likely affect the buyer's transactional decision to proceed in purchasing the property.

Agent B could be committing an offence for omitting information relating to the subsidence unless they were unaware of it due to the act or default of the vendor who has hidden the fact, in which case the vendor commits the offence.

This advice only applies to England, Wales & Scotland.

**Date Advice is Effective from:**

18 08 2016

**Reference and renewal:**

The reference for this advice is: WTS/NFOPP/TPOS/20

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