

Primary Authority Partnership

Warwickshire County Council Trading Standards

Old Budbrooke Road, Warwick, CV35 7DP

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Propertymark

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The Property Ombudsman

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Primary Authority Advice Reference WTS/PM/TPO/17

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:

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")*

Tenant Fees Act 2019*

(*These are not 'relevant enactments' for the purposes of the Regulatory Enforcement and Sanctions Act 2008. Advice relating to these enactments must not be regarded as 'assured advice'.)

Other Material considered:

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

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

London Borough of Camden v F Ltd [2017] UKUT 349 (AAC)

Assured Advice Issued:

Section 83 of the CRA requires letting agents to display their fees for tenants (where permitted) and landlords, and gives details of how and where this information should be given (This paragraph does not form part of the Assured Advice).

Given the importance of these requirements, 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.

Date Advice is Effective from (issue date): 23 09 2019

Last Review Date: 20 10 2020

Next Review Date: 19 10 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 in England.

Scope: This advice is applicable to all member businesses acting in a capacity of letting agent or managing 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/.