



## **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

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Primary Authority Advice Reference WTS/PM/TPO/21

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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.

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#### **Advice requested:**

Is it misleading for a letting agent not to display penalty fees in their adverts?

#### **Legislation considered:**

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

Consumer Rights Act 2015\*

Tenant Fees Act 2019\*

\*These enactments are not 'relevant enactments' within the Regulatory Enforcement and Sanctions Act 2008, so references to them should be considered outside the ambit of 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")

Guidance for lettings professionals on consumer protection law, June 2014: CMA (“CMA Guidance”)

### **Assured Advice Issued:**

Paragraph 5.21 of the CMA guidance states that *‘where an advert provides details of the property and any other cost information (such as rent), all other non-optional fees & charges should be included’*.

If permitted non-optional fees, including any penalty charges, are omitted from adverts, consumers might choose to make a transactional decision (such as viewing a property or undergoing a credit reference check) that they may not have done had they known about the fee/charge.

If the agent does apply pre tenancy charges when tenancy is aborted due to a poor credit reference or for some other reason (as permitted by the Tenant Fees Act), then this would be considered material information and should be made available to consumers within an advertisement.

Penalty charges, including abortive fees, should be included in marketing materials, advertisements or other promotional materials so that consumers are aware of their existence before taking a transactional decision.

**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.

**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](http://www.tpos.co.uk/members/assured-advice/assured-advice-information)

and



[www.propertymark.co.uk/working-in-the-industry/primary-authority-advice/](http://www.propertymark.co.uk/working-in-the-industry/primary-authority-advice/).