



Primary Authority Partnership

Warwickshire County Council Trading Standards

Old Budbrooke Road, Warwick, CV35 7DP

&

Propertymark

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

&

The Property Ombudsman

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

Primary Authority Advice Reference WTS/PM/TPO/06

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:

Should an agent disclose that there is a legal limit on the occupancy of a building that is being marketed for rent?

Legislation considered:

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

Other Material considered:

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

Trento Sviluppo srl and another v Autorità Garante della Concorrenza e del Mercato (Case C-281/12), 19th December 2013

Assured Advice Issued:

If a local authority introduces a legal obligation on owners of property to obtain a licence, before the property can be let to any tenants, then this is certainly material information and the agent should check the licence is in place before marketing.

If the conditions on the licence stipulate a maximum occupancy for the property, then this will be material information that any prospective tenant would need to know before taking a transactional decision.

The appeal case to the European Court from Italy (Trento above) decided that a 'transactional decision' can even include the decision whether or not to enter a shop.

So if the maximum occupancy rate from the licence was not placed onto any marketing information, a consumer could take a transactional decision (e.g. to phone or visit the agent), that they may not have taken had they known the maximum occupancy would not suit their individual needs.

Our best advice is for agents to display the maximum occupancy rate on marketing information, where there is a legal limit in place that will affect the occupancy of the property.

Date Advice is Effective from (issue date): 18 09 2015

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 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/.