



## **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/37

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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:**

1. The previous occupant of a property was murdered or committed suicide; do I need to disclose this to potential purchasers / tenants?
2. The vendor of a property is a convicted paedophile. Do I have to tell potential purchasers? What if the paedophile is not the vendor, but a near neighbour?

#### **Legislation considered:**

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

National Trading Standards Estate and Letting Agency Team, 'A guide to running your property business legally', section 10, 'Disclose material information', at [www.bristol.gov.uk/web/ntselat/guide-to-running-your-property-business-legally](http://www.bristol.gov.uk/web/ntselat/guide-to-running-your-property-business-legally), accessed 7/11/19

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

Office of Fair Trading v Purely Creative Ltd and others, [2011] EWHC 106 (Ch)

Child Sex Offender Disclosure Scheme Guidance (The Home Office, 29<sup>th</sup> October 2010, at [www.gov.uk/government/publications/child-sex-offender-disclosure-scheme-guidance](http://www.gov.uk/government/publications/child-sex-offender-disclosure-scheme-guidance), accessed on 7/11/19)

### Assured Advice Issued:

1). Agents should pass on all the material information that a potential purchaser or tenant needs in order to make their transactional decision. Failure to do this could be considered a misleading omission.

In Office of Fair Trading v Purely Creative Ltd and others, the judge makes the following remarks: “In my judgment the key to understanding this paragraph is the concept of ‘need’. The question is not whether the omitted information would assist, or be relevant, but whether its provision is necessary to enable the average consumer to take an informed transactional decision”.

It is also worth mentioning that, following the Trento case above, ‘transactional decision’ can even include the decision whether or not to enter a shop.

The NTS ‘Guide to running your property business legally’ lists, under ‘What should be disclosed’, the following:

‘notable events at the property or unusual features such as a recent suicide or murder, or if the vendor is a convicted paedophile.’

As with every situation, it would depend on the circumstances. We would suggest that deaths that occurred inside the property some time ago are not material information. However, such an event may well still be public knowledge, the agent may be asked the question by a prospective purchaser/tenant, and thus should answer truthfully.

In relation to more recent events, we would concur with the advice given by NTS.

By way of example, we understand that a property in London advertised for sale in 2015 had the following statement included in its particulars: ‘BUYERS ARE KINDLY ASKED TO RESEARCH THE HISTORY OF THIS PROPERTY OR ENQUIRE WITH THE MARKETING AGENT PRIOR TO VIEWINGS.’

2). In relation to *convicted* paedophiles, we again agree with the advice given by NTS. However, we would remind agents that unless it is something of which they have personal knowledge, the only legal confirmation that someone has such a conviction is that available through the Child Sex Offender Disclosure Scheme, and is subject to a number of conditions.

We would caution agents not only to avoid unsubstantiated gossip and rumour, but also to have regard to potential public order issues before publishing anything. We would suggest that such information only be disclosed to those whom the agent feels would benefit from it.

**Date Advice is Effective from (issue date):** 17 12 2019

**Last Review Date:** 14 01 2021

**Next Review Date:** 13 01 2022

**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](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/).