



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

Primary Authority Advice Reference WTS/PM/TPO/38

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:

Would it be a misleading omission to fail to give information about pollution levels or flood risks for a residential property for sale or let?

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”)

<https://uk-air.defra.gov.uk/>, accessed on 14th April 2021

<https://flood-map-for-planning.service.gov.uk/>, accessed on 14th April 2021

Assured Advice Issued:

Pollution levels and flood risks for an area are quite easily checked, for example by means of websites maintained by DEFRA, the Environment Agency and others. These issues may also now be more likely to be considered “material information” by the average consumer.

The NTS Guidance states (at para. 4.7):

“It is a breach of the CPRs for businesses to mislead consumers by failing to give them the information they need in order to make an informed decision, where this causes or is likely to cause the average consumer to take a different transactional decision.”

We do not consider it necessary to include this information for every property marketed; but where the flood risk or pollution level is likely to be “material” to the average consumer (for example the pollution level is high, or the property is in a flood risk zone), then it may well be a misleading omission not to include it.

Pollution levels are likely to change day by day according to atmospheric conditions, so the date on which the figure was obtained should also be included.

Date Advice is Effective from (issue date): 17 04 2020

Last Review Date: 14 04 2021

Next Review Date: 13 04 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

and

www.propertymark.co.uk/working-in-the-industry/primary-authority-advice/.