

## 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

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This advice is applicable to all member businesses. If you are contacted by a local authority enforcement body, please ensure that you inform them that you are a member of the scheme.

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### Advice requested:

When is it permissible for an estate agent marketing a property to describe an attic space as an additional bedroom?

### Legislation considered:

Consumer Protection from Unfair Trading Regulations 2008 (“CPRs”)

### Other Material considered:

National Trading Standards Guidance on Property Sales – Compliance with the Consumer Protection from Unfair Trading Regulations 2008 and Business Protection from Misleading Marketing Regulations 2008. [September 2015] (“NTS Guidance”)

### Assured Advice Issued:

An agent should only market a property described as having an additional bedroom in the attic space, if they are satisfied that the loft conversion has been approved by the relevant local authorities for use as a bedroom, and not just for storage space.

According to the CPRs, a trader should not engage in a commercial practice which is a misleading action, and which causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

In the context of the question:

- The **commercial practice** is the advertising and marketing of the property by the agent. (Regulation 2)
- The **misleading action** is false information as to one of the main characteristics of the property. [NB a commercial practice can also be a misleading action if its

overall presentation in any way deceives or is likely to deceive the average consumer] (Regulation 5)

- The **transactional decision** is the decision to make an offer to purchase the property, or it could be the decision to commission a survey on the property. (Regulation 2)

In addition, it is a misleading omission to omit or hide material information, or provide material information in a manner which is unclear, unintelligible, ambiguous or untimely.

This Service is of the opinion that the planning status of any works undertaken within a property is likely to be considered to be **material information** which a consumer needs to make a purchasing decision. Therefore, failing to inform consumers that there is no planning consent for the attic room, or providing the information after the consumer has commissioned a survey, could be a misleading omission.

If an agent marketed a property incorrectly described as a four bedroom house, when there was no consent for the attic to be used as a fourth bedroom, and this was likely affect the average consumer's decision either to purchase, or to commission a survey, then this could be an offence.

An agent would have a defence if he could prove that the commission of the offence was due to

- a mistake;
- reliance on information supplied to him by another person;
- the act or default of another person;
- an accident; or
- another cause beyond his control and
- that he took all reasonable precautions and exercised all due diligence to avoid the commission.

Some examples of **reasonable precautions and due diligence** are provided in the NTS guidance.

However, as a minimum we would expect an agent to:

1. Request documentary evidence from the vendor, confirming that the works have been approved and signed off by the local authority, and ensuring that there is evidence that there is approval for the conversion to be used as a bedroom
2. Confirm with the local authority that there is nothing outstanding with regard to the loft conversion
3. Keep written records of all enquiries and conversations
4. Keep copies of all relevant paperwork for a minimum of three years
5. If there is no documentary evidence that there is consent for the conversion to be used as a bedroom, the room should be described only as a 'loft conversion'

or 'attic room' and should not be included in the number of bedrooms in the property particulars.

**Date Advice is Effective from:**

10 03 2016

**Reference and renewal:**

The reference for this advice is: WTS/NFOPP/TPOS/1

This advice will be reviewed annually; however it will remain valid until it is marked 'obsolete' on the Primary Authority Database. If any part of this document requires amendment following a review, a completely new version will be added to the database and the previous version shall be marked 'obsolete'.