

4.15 Here are some illustrative **examples of misleading omissions**. It is not an exhaustive list. In each case, the test is whether the average consumer would be misled and, as a result, would take a different transactional decision.

When you advertise for new business

- Failing to provide sufficient information about the range of relevant services you offer, so prospective new clients are not clear what is included as part of the deal or what you will actually provide yourself.

When you gain new clients and instructions²⁸

- Failing to provide a client with full information on fees and charges, such as how they are calculated and when they will be payable, and on the terms of business (for example, sole agency, sole selling rights, length of contract, any tie-in period) before they become contractually bound.
- Failing to adequately highlight or draw to a prospective client's attention unusual or surprising terms in your terms and conditions.²⁹
- Failing to inform a prospective client of the types of services that you will offer to the buyer.
- Failing to disclose an interest you have in the sale.

When you market property

- Failing to disclose the property's main characteristics to a prospective viewer, for example its price, location, number and size of rooms, length

²⁸ Many of the examples given in this section are likely also to contravene the provisions of the Estate Agents Act 1979 and, where relevant, subordinate legislation.

²⁹ An example would be basing commission on the asking price rather than the final selling price. Note also that where a term which has not been individually negotiated (for example it is one of your standard terms) is onerous and surprising, and you do not draw it to the consumer's attention, you may not be able to rely on it at all, due to the Unfair Terms in Consumer Contracts Regulations 1999.