

Material information in property listings**'Price on Application' (POA)****Introduction**

We have been asked to provide a view on the use of 'POA' in property listings (principally sales listings) and whether this contravenes consumer protection legislation.

Background

The Consumer Protection from Unfair Trading Regulations 2008 (the CPRs) [The Consumer Protection from Unfair Trading Regulations 2008 \(legislation.gov.uk\)](#) control unfair practices used by traders when dealing with consumers, and create criminal offences for traders that breach them. The Regulations prohibit unfair commercial practices and set out the criteria on the basis of which practices are to be classified as being unfair, including being misleading by action or omission. Commercial practices are misleading by omission if, taking into account the circumstances of the commercial practice and the medium used to communicate it, they omit, hide, disguise or delay material information so as to cause the average consumer to make a transactional decision that they would not otherwise have made.

Misleading omissions

Regulation 6 of the CPRs states (inter alia):

6.(1) A commercial practice is a misleading omission if, in its factual context -

- (a) the commercial practice omits material information,
- (b) the commercial practice hides material information,
- (c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous, or untimely

and as a result it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

Definitions

'material information' means the information which the average consumer needs, according to the context, to take an informed transactional decision

'transactional decision' means any decision taken by a consumer, whether it is to act or to refrain from acting, concerning—

- (a) whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product; or
- (b) whether, how and on what terms to exercise a contractual right in relation to a product.

Opinion

Our view is that 'POA' or 'price on application' in relation to a property listing, whether on a property portal or an agent website (or similar) is likely to be misleading as it is withholding (or in some cases masking) the asking price from consumers. Not displaying the asking price is likely to be

a misleading omission in that the price is information which the average consumer needs in order to take an informed transactional decision – i.e. to make enquiries about the property, conduct further research, arrange a viewing etc. The Competition and Markets Authority has also confirmed that it considers that the absence of pricing information (i.e. the POA approach) is likely to mislead by omission.

Reference is made to a barrister’s opinion received from Lee Reynolds (dated 1/12/20), in particular the following paragraphs:

25. It is my firm view that ... all important features that may impact on the decision to contact an agent about a property should be disclosed in the initial advert.

27. Agents must put themselves in the position of potential purchasers and ask whether omitting the information may make a consumer make contact regarding the property when they may not have done so had the information been disclosed.

28. ... the position is just as clear when considering the legal requirements of property portals. Once again they, like anyone in the industry, are fully aware of the obvious importance of this information, fully aware of the impact that a failure to disclose can have and should not be listing properties without this information.

29. ... it is difficult to see a portal having a defence under Regulation 16 or 17 simply on the basis of being a portal. They may have a defence where the information is provided but is subsequently discovered to be factually incorrect but I cannot see how, when agents and portals are fully aware of the importance of this information, a failure to include the material information in the first place can be justified.

30. Furthermore I fail to see how any portal could rely on Regulation 18 once they are effectively “on notice” from NTSELAT of the implications of failing to make the information available. Quite frankly I am surprised they need to be “on notice” in the first place based on the obvious importance of this information. It must not be forgotten that for many, if not most, the purchase of a property will be the biggest financial decision of a consumer’s life – a failure to provide such basic and available information is simply unacceptable in my view and likely to constitute a criminal offence.

A failure to indicate the price of a property may also be a breach of para 7i of The Property Ombudsman code of practice for residential estate agents (all nations) [Codes of Practice \(tpos.co.uk\)](https://www.tpos.co.uk).

Note: The National Trading Standards Estate & Letting Agency Team wishes to make it clear that when providing any advice or guidance:

Legislation may change over time and the opinion given is based on the information available at the time it was produced. It is not necessarily comprehensive and is subject to revision in the light of further information. Only the courts can interpret statutory legislation with any authority.

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