



The Property Ombudsman

Annual Report 2011



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The Property Ombudsman Scheme

■ Who are we?

The Property Ombudsman (TPO) scheme was established in 1990 as the Ombudsman for Corporate Estate Agents. In 1997 the scheme was renamed as the Ombudsman for Estate Agents (OEA) and then changed to TPO in 2009 to reflect its broader jurisdiction in relation to the resolution of disputes relating to sales, lettings, Home Information Pack providers, residential leasehold management, commercial property and chattels auctions.

■ The Scheme

In June 2008 OEA was the first redress scheme to become an OFT Approved Estate Agents Redress Scheme under the provisions of the Consumers, Estate Agents and Redress Act 2007.

Both the TPO Code of Practice for Residential Estate Agents and the TPO Code of Practice for Residential Letting Agents have received OFT approval under its Consumer Codes Approval Scheme (the latter being Stage 1 in July 2011).

■ What does TPO do?

TPO provides consumers with a free, impartial and independent dispute resolution service of complaints against registered firms (TPO scheme members). The Ombudsman's resolutions are designed to achieve a full and final settlement of the dispute and all claims made by either party. The Ombudsman can, where appropriate, make compensatory awards in individual cases up to a maximum of £25,000 for actual and quantifiable loss and/or for aggravation, distress and/or inconvenience caused by the actions of a registered firm.

■ Redress not Regulation

The Ombudsman provides redress, where appropriate, to consumers whose complaints are considered on a case by case basis. Redress is intended to put the consumer back into the position they were before the complaint arose. The Ombudsman is not a regulator and does not have the authority to take regulatory or legal action against a registered firm. The Ombudsman does not have the power to impose fines or dictate the way in which firms conduct their business. All registered firms are required to act in accordance with the relevant TPO Code of Practice.

■ Independence

Whilst the scheme charges its members an annual subscription which is collected by the Board of TPO, the Ombudsman reports to the independent Council, the majority of which is made up of non-industry members. The Council appoints the Ombudsman and sets his Terms of Reference. The Ombudsman is accountable to the Council.

■ BIOA

TPO is a full member of the British and Irish Ombudsman Association (BIOA) and adheres to the organisation's principles of good governance for ombudsman schemes.

■ Contact

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Foreword

by the Chairman of the Council



The Council of The Property Ombudsman ensures the Ombudsman's independence and provides impartial oversight and support. The Board, chaired by Bill McClintock, has responsibility for managing TPO's legal and financial company affairs, and for policy on membership matters. The Council checks on the performance of the service, discusses broader policy concerns, offers advice – including on changes to the Codes of Practice promoted by the Ombudsman – and investigates serious breaches of the Codes through its Disciplinary and Standards Committee. An Independent Reviewer is on hand to hear cases where the complainant does not feel the Ombudsman has followed the proper processes: but his services are rarely called upon.

The arrangements work very smoothly and we are more than satisfied that those that complain to TPO have their disputes resolved fairly and effectively. This is to the great credit of Christopher Hamer, the Ombudsman, who has been seeking to raise standards not only at home but internationally. The Council congratulates Christopher and all his staff on a very successful year.

The growth in complaints about letting agents, rather than sales agents, has continued: well over half TPO's cases are now about lettings. With fewer people buying and a big growth in renting, this trend is not surprising. But these disputes are often more complex and time consuming to sort out than for the single transaction sale: they require more input from the Ombudsman service so it is gratifying to note that our surveys show high levels of consumer satisfaction.

The problem remains that a lot of letting agents – perhaps nearly 40% – are not registered with any ombudsman scheme; and among these there are some distinctly dubious firms. Until there is an obligation for these agents to register with an ombudsman scheme – as there is for all sales agents – the industry is going to have a continuing problem.

Unaffiliated agents can make life a misery not only for tenants but for landlords. Nearly 55% of complaints to the Ombudsman about letting agents come from landlords.

In the UK, the private rented sector is dominated by very small landlords: over 40% of all such dwellings are owned by a landlord with only one property. Since so many landlords are investors, not property professionals, the requirement for high quality managing agents is essential: these landlords cannot be expected to be experts on Landlord-Tenant Law and all aspects of property management. But too many of them are choosing, out of ignorance, agents where no one is ensuring that proper standards – enshrined in a Code of Practice – are being followed. TPO is supporting the campaign by NALS (the National Approved Letting Scheme) to impress upon landlords that they should only use agents that can display the "SAFEAgent" logo which indicates that they are dealing with an agent that has proper Client Money Protection insurance, as well as Professional Indemnity insurance and is a member of an ombudsman scheme.

The experience of the Ombudsman service for estate agents shows how standards can be raised, year by year, as agents become familiar with the process. TPO's hope is that the next step – which may require an extension of the legislation – will be to achieve the same results for all the letting agents.

I conclude by placing on record my appreciation not only of Christopher Hamer but all the members of TPO Council with special thanks to Mary Wilson-Jones who is tireless in her work as Chair of our Disciplinary Standards Committee.

A handwritten signature in black ink, reading "Richard Best". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lord Richard Best OBE
Chairman of the Council

2011 Highlights

OFT Approval

'Stage 1 Approval' for the TPO Code of Practice for Residential Letting Agents was achieved in July. As part of this process, monitoring of registered firms is under way in order to gain final OFT approval. The Code has also been reviewed and updated to take into account the judgment in the Office of Fair Trading v Foxtons Ltd (2009) EWHC 1681 (Ch) case regarding fees for tenancy renewals and sales to sitting tenants.

Office Move

After spending 19 years in our former premises at Beckett House, TPO moved to more functional accommodation at Milford House, 43-55 Milford Street, Salisbury. This has enabled us to accommodate a growing number of staff members, related to the general increase in workload over the last five years, and it has led to increased efficiency of workflows. The move was achieved in April.

Europe and Beyond

The Ombudsman was invited to speak at the European Congress on Real Estate in Berlin in May. Germany (in particular) and other EU states expressed interest in establishing independent dispute resolution mechanisms and were keen to understand the TPO 'model', realising that the Codes of Practice had significantly enhanced estate agency performance and raised standards for consumers in the UK. This was reflected in the results of the EU Directorate-General for Health and Consumers' 2010 Consumer Market Monitoring Survey rating the UK's estate agents as the 2nd most trusted real estate sector in the EU for consumer protection. The international interest in TPO extended to welcoming a delegation from the Chinese government in December, who were also evaluating alternative methods of dispute resolution.

Events and Conferences

Along with the Ombudsman's regular speaking slots, TPO took to the road and, for the first time, exhibited at the Trading Standards Institute conference, the Citizens Advice Bureau conference, the Property Professional Show and at a number of larger firms' annual conferences. The 2012 events programme has been expanded and announcements will be made via the website and our Twitter account (@TPOmb).

Increasing Membership

TPO membership levels continued to rise with 850 new letting agents and 183 new sales agents registering with TPO in 2011, despite overall property sales declining. By 31 December 2011, the total number of offices registered for sales with TPO rose to 11,504 (an estimated 93% of UK sales agents), whilst offices registered for lettings increased to 8,701 (an estimated 60% of UK letting agents).

Lettings Workload

2011 saw TPO deal with 7,641 letting enquiries, an increase of 26.2% on 2010 figures. The number of formal lettings case reviews increased to 756, a 42.1% increase from 2010. The split between lettings and sales cases formally reviewed moved from 51 and 49% in 2010 to 57 and 43% in 2011.

6.7%
overall
increase in
firms
registering
with TPO

19.2%
increase
in overall
enquiries

101
early
resolutions

1,326
formal reviews

9.2%
decrease
in formal
sales reviews

42.1%
increase
in formal
letting reviews

26.2%
increase
in letting
enquiries

57%
of all formal
reviews
concerned
lettings issues



Christopher J Hamer Ombudsman

Christopher Hamer took up his current post as The Property Ombudsman in December 2006. Prior to this he was the Private Secretary to the Parliamentary Commissioner, Director of Services at the Insurance Ombudsman Bureau and the General Manager at the Personal Investment Authority Ombudsman Bureau. Immediately before taking up his position as The Property Ombudsman he was in a global compliance role with a major international bank.

Ombudsman's Report

Letting Agents, Consumers and Acceptable Standards

Over the last three years in particular, the private rented sector (PRS) has become increasingly important in providing homes for people. Letting and management agents have a significant involvement in the process and in my experience, and as I have remarked previously, many such agents have yet to reach the level of improving standards now displayed by sales agents.

In 67% of lettings cases I found wholly or in part in favour of the complainant. This compared to a figure of 56% for sales cases. Furthermore, 79% of the awards I made which were more than £1,000 were against letting agents, indicating the greater significance of their errors and that their performance perhaps needs addressing. However, we should not lose sight of the fact that around 40% of agents operating in the lettings sector have not displayed the same commitment by registering with TPO, and may well be culpable for still more significant and serious errors. It seems clear that the PRS will continue to grow in the foreseeable future, with increasing numbers of people renting rather than buying. The disputes I see and the inevitable growth of the sector highlight the real need for all lettings agents to adopt very clear and consistent standards for their business and for there to be proper consumer protection in this area.

The Coalition Government has maintained its policy of not imposing regulation on any industry sector. Some form of regulation of letting agents is supported by the industry itself as well as by consumer groups. I can only hope that the Government's current policy does not result in headlines of consumers being unfairly treated or losing money as a result of disreputable agents being able to operate unfettered in the market place.

Any formally structured regulatory regime would mean a greater commitment to compliance and enforcement, but with the outcome of an environment in which consumers (both landlords and tenants) could transact business with confidence. Whilst formal regulation appears unlikely, letting agents who have registered with TPO have already voluntarily committed to compliance with a prescribed set of standards by virtue of following the TPO Code of Practice for Residential Letting Agents. The improving service provided by sales agents shows adherence to a set of standards is perhaps more effective, flexible and workable than a comprehensive rulebook.



The key issue in imposing a set of voluntary standards is ensuring that consumers understand why they should avoid agents who refuse to sign up to independent redress through TPO, or who do not seek out membership of ARLA, NALS, RICS or another recognised industry body



On that same theme, the TPO Code of Practice for Residential Letting Agents achieved 'Stage 1 Approval' under the Consumer Code Approval Scheme run by the Office of Fair Trading (OFT) in July 2011.

Industry 'Council'

The key issue in imposing a set of voluntary standards is ensuring that consumers understand why they should avoid agents who refuse to sign up to independent redress through TPO, or who do not seek out membership of the Association of Residential Letting Agents (ARLA), the National Approved Letting Scheme (NALS), the Royal Institution of Chartered Surveyors (RICS) or another recognised industry body. Getting that message across can only be achieved by these organisations pulling together (with a consumer stakeholder contribution) so that it is obvious which firms remain in the minority of firms intent on operating outside industry approved standards. If all these bodies worked together, perhaps under a 'Council' (albeit one with no executive responsibility) they could ensure that firms within their membership or influence could attract the consumer because they display certain confidence measures, specifically:

- Membership of an independent redress (Ombudsman) scheme.
- Licensing of firms'

representatives by an appropriate body.

- Proper facilities for the protection of client money (with £6-10 billion in rent being collected annually the risks for landlords and tenants should not be underestimated).
- Common standards, applied through adherence to Codes of Practice.
- Adherence to Tenancy Deposit protection regulations.

Consumer Education

Another constructive role for such a Council would be in consumer education. From the disputes referred to me it is obvious that too many people launch themselves into property-related transactions (whether letting or renting, or indeed buying and selling) with little knowledge and without proper research. Having a structured and consistent approach to this important issue should lead to consumers with heightened understanding; and it could also lead to less dissatisfaction with agents, as consumers would know how to interpret, understand and question what is being presented to them. What is more, a concerted effort on consumer education would also raise awareness amongst consumers that using an agent who operates solely according to his own set of standards will present them with an increased risk.

If regulation of the PRS through legislation is unlikely, and establishing a Council voluntarily would take time and much consideration, is there a quicker 'fix'?

A Simple Solution?

Another approach to the problem is to make membership of a redress scheme compulsory, thereby making the TPO Code of Practice for Residential Letting Agents potentially applicable to the remaining 40% of agents who are not currently signed up. Sales agents are required by the Consumers, Estate Agents and Redress Act (CEARA) 2007 to be registered with an OFT Approved Redress Scheme and are now used to working in such a regime. As many sales agents have broadened their business into lettings, it could be argued that this would not present (for the majority of firms) anything different and it would remove a clear inconsistency for consumers. This compulsion could, I believe, be readily achieved through an amendment to the Estate Agents Act 1979 and in particular to Section 1 (1) which defines estate agency as:

"... things done by any person in the course of a business (including a business in which he is employed) pursuant to instructions received from another person (in this section referred to as "the client") who wishes to dispose of



The consequences of redefining just one word would mean that the obligations of the CEARA would become applicable to every agent operating a lettings business, forcing them to join an approved redress scheme and obliging them to act in accordance with a Code of Practice



or acquire an interest in land –
(a) for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to acquire or, as the case may be, dispose of such an interest; and
(b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or, as the case may be, the acquisition of that interest;”

I will not attempt to give my full thinking on how this might be achieved but, put simply, if the definition of ‘interest’ included any interest in a property, this would embrace all forms of tenancy. Currently the Act does include leases of a capital value within the definition of ‘interest’ but even an Assured Shorthold Tenancy (particularly now the upper limit on rental is £100,000 per annum) could be said to have a clear value.

The consequences of redefining just one word would mean that the obligations of the CEARA would become applicable to every agent operating a lettings business, forcing them to join an approved redress scheme and obliging them to act in accordance with a Code of Practice. As is currently the case for sales agents, those letting agents who continued to operate outside the law would be subject

to individual enforcement action by Trading Standards.

None of the options that I have briefly discussed here should be seen as simply a means of driving out the bad. Adopting any of these approaches would improve consumer confidence in the sector and enhance the general professionalism of those working in it. That surely must be in the interests of the consumer and the business.

Government Consultations

During this past year various Government departments have issued consultation papers of relevance to the property sector. There were two particular Government consultations, the results of which could have significant implications for the estate agency sector. Whilst at the time of writing these consultations have yet to be concluded, I will take this opportunity to caution all agents, and indeed consumers, to fully understand the potential effects.

Repeal of the Property Misdescriptions Act 1991

The Department for Business, Innovation and Skills (BIS) issued a consultation paper on the potential repeal of the Property Misdescriptions Act 1991 (PMA). BIS has prompted such consideration on the basis that the Consumer Protection from Unfair Trading



Regulations 2008 (CPRs) place equivalent obligations on a firm and that therefore the PMA is redundant. My submission to BIS expressed my firm view that the CPRs could not replace the PMA as the CPRs are very broad-based and designed to cover general retailing of goods and general provision of services to consumers. By contrast, the PMA is absolutely precise in requiring an agent to describe correctly and truthfully no less than 33 specified aspects about a property which they are instructed to market. Agents therefore know what their responsibilities are and consumers can understand and rely on what to expect from the agent.

I know that other bodies, notably the National Association of Estate Agents (NAEA) and Local Government Regulation (Trading Standards), have expressed similar views to mine to BIS. Briefly the CPRs introduce the general concept of 'material' information. Whilst the Regulations provide a definition of how materiality might be arrived at by considering the behaviour of the 'average consumer', the door is left open to ambiguity about what the term 'material' actually means in practice. The precision of the PMA and its associated regulations mean that both parties should know what is required of agents and what prospective buyers can expect. The PMA is also precise in terms of what

defences the 'innocent trader' can claim and is clear on enforcement. The CPRs allow both agents and consumers room for manoeuvre about what is, was or might have been considered material to the transaction. As a result, if the PMA was repealed I believe there will be many more disputes arising about what constitutes 'material' to cloud any complaint, dispute or action involving a consumer claiming they have been disadvantaged as a result of a misdescription. The consequence will be either greater aggravation for the consumer in pursuing their claim or otherwise abandoning it.

OFT Guidance

The other consultation follows on from my previous paragraphs. Although the consultation on the relative coverage of the PMA and CPRs has yet to bring a government response, the OFT has already issued, for informal consultation, draft guidance on how the CPRs would apply to estate agents. The OFT has adopted a positive approach to testing the guidance with various bodies (including TPO) and trade representatives. However, the drafting of this guidance does appear to point to a decision having been made to repeal the PMA. Nonetheless all agents should ensure that they read the draft guidance when it is issued for formal consultation and then respond. My

overall view is that if the CPRs are to be the legislation that applies to Property Misdescription then the guidance should be very precise about what is fair and honest, what it is realistic to count as a 'reasonable' approach, how an 'average consumer' is defined and what can be classed as 'material' information. There are statements in the draft guidance which are meant to ease concerns about the potential for flexible interpretation but I am concerned that the guidance might simply leave the boundaries unclear as to what is acceptable and what is not. That will not serve consumers or agents well and make my role to determine disputes against set requirements more difficult.

Finally, I cannot let the opportunity pass to thank every member of staff in my Office for another year of maximum effort and contribution by them to the constantly increasing flow of cases and enquiries referred to TPO. There is never a time when my team has the opportunity to take it easy and I am more than grateful for their total commitment to achieving our targets.

Christopher J Hamer
Ombudsman

General Statistics

Membership - Registered Offices	31 Dec 2010	31 Dec 2011	Increase
Lettings	7,851	8,701	850
Sales	11,321	11,504	183
Commercial	183	327	144
Residential Leasehold Management	36	90	54
International	21	78	57
Chattels	6	16	10
TOTAL	19,418	20,716	1,298

Overall membership levels increased by 6.7%, which included 850 new offices registering for lettings and agreeing to act in accordance with the TPO Code of Practice for Residential Letting Agents.

As a percentage of the overall complaint enquiries, letting enquiries increased from 51.3% in 2010 to 54.3% in 2011.

By contrast, sale related complaint enquiries, as a percentage of overall enquiries, decreased from 32.4% in 2010 to 29.8% in 2011.

The Complaint Process

STAGE 1 Contact TPO Office

The Initial Enquiries Team determines whether the complaint falls within the Ombudsman's Terms of Reference (i.e. if it can be considered) or offers guidance to the consumer if TPO is unable to process the complaint.

STAGE 2 Guidance

If the complaint can be accepted, the Initial Enquiries Team will establish whether the dispute has been raised with the registered firm and whether the firm's in-house complaint process has been completed and a final viewpoint letter issued.

STAGE 3 Early Resolution

Following receipt of the signed Complaints Form and supporting documentation, if we consider that the dispute could be resolved without a formal review, TPO will contact both parties to seek a resolution.

STAGE 4 Accepted for Review

The Case Management Team contacts the registered firm to request their company file and their formal response to the complaint.

The Ombudsman can consider complaints:

- Made against firms registered with TPO.
- Where the issue came to the complainant's attention within 12 months of a written complaint being issued to the registered firm.
- Which have completed the registered firm's in-house complaints process.
- Which are referred to TPO within six months of the date of the registered firm's final response.

Overall Enquiries	2010	2011	Increase
Lettings	6,054	7,641	1,587
Sales	3,822	4,186	364
Other / General	1,918	2,239	321
TOTAL	11,794	14,066	2,272

The increase of 2,267 enquiries received by TPO during 2011 has resulted in overall enquiries rising by 19.2%.

Lettings Enquiries	2010	2011	Increase
Within Terms of Reference	4,295	4,999	704
Outside Terms of Reference	89	722	633
Against non TPO Agents	1,670	1,920	250
TOTAL	6,054	7,641	1,587

Unsurprisingly, lettings enquiries increased more than sales. The additional 1,587 enquiries corresponded to a 26.2% increase in letting enquiries, which proved significantly higher than our predictions for 2011.

Sales Enquiries	2010	2011	Increase
Within Terms of Reference	3,157	3,289	132
Outside Terms of Reference	24	279	255
Against non TPO Agents	641	618	-23
TOTAL	3,822	4,186	364

Surprisingly, sales enquiries increased by 9.5%. However, as a proportion of the general enquiry workload, enquiries relating to firms registered for sales reduced.

STAGE 5 Formal Review

The case is allocated to a Case Officer who conducts a full and impartial investigation, considering all the submissions provided by both parties. The Case Officer then produces a report with recommendations for the Ombudsman.

The Ombudsman cannot consider complaints:

- Which have not previously been presented to the registered firm as a formal written complaint.
- Which are being dealt with by a Court or a regulatory body, unless both parties have agreed to place that action on hold.

STAGE 6 Proposed Decision

The Ombudsman considers the report and issues his Proposed Decision to the unsupported party first and then the supported party.

STAGE 7 Representation

Each party is provided with the opportunity to accept or represent against the Proposed Decision.

The Ombudsman can use his discretion where he considers complaints to be either frivolous or vexatious.

STAGE 8 Final Decision and Award

Following consideration of any new evidence, the Ombudsman will issue his Final Decision. If the complainant accepts the Final Decision and an award has been made, the Case Management Team will check that it has been paid by the registered firm. If the complainant has not accepted the Final Decision, they remain free to pursue the matter elsewhere.



**"I wish to thank you for taking the time to deal with the complaint for us and the tenant, and for your honest and unbiased approach to the handling and reporting of your report."
Agent S, London**

Lettings Statistics

These statistics relate to complaints which progressed to the formal review stage.

Lettings Caseload	2010	2011	Increase	% Increase
Workload	672	768	96	14.2%
Reviewed	532	756	224	42.1%
Cases Closed	525	769	244	46.5%
Representations	136	215	79	58%

The increase in formal reviews completed during 2011 is testament to the hard work and commitment shown by TPO staff.

Description of Complainants	2010		2011	
	Cases	% Split	Cases	% Split
Landlord	305	58.1%	421	54.8%
Tenant	220	41.9%	344	44.7%
Other	0	0%	4	0.5%

2011 saw a small shift in tenant complaints increasing as part of the overall caseload for formal reviews. However, complaints from landlords remained consistently higher.

Lettings Decisions	2010		2011	
	Decisions	% Split	Decisions	% Split
Non-Support	160	30.5%	251	32.6%
Support	365	69.5%	518	67.4%

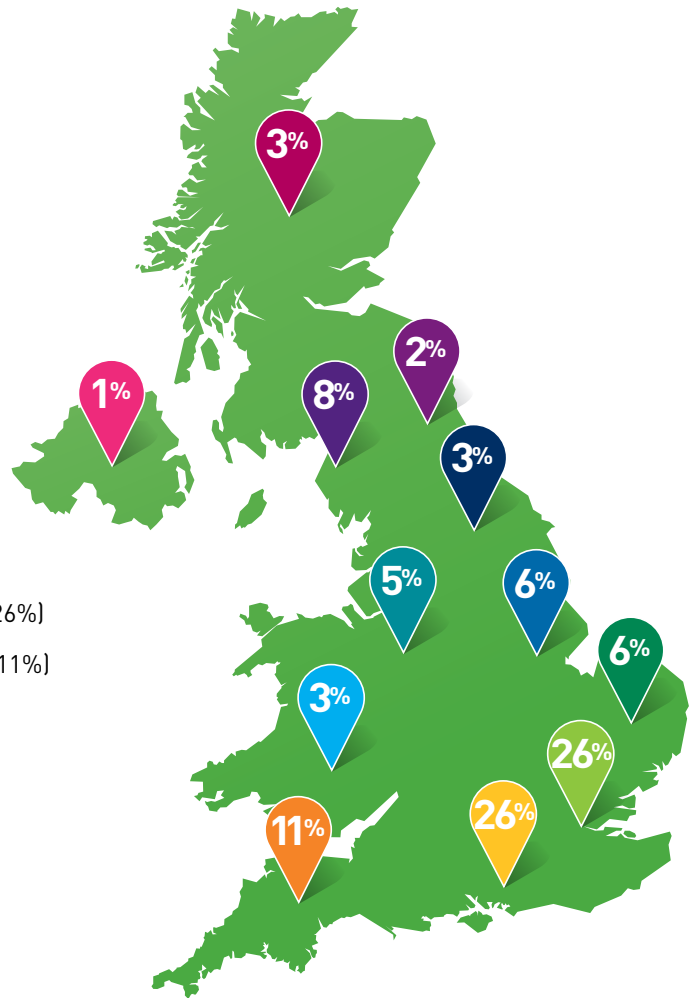
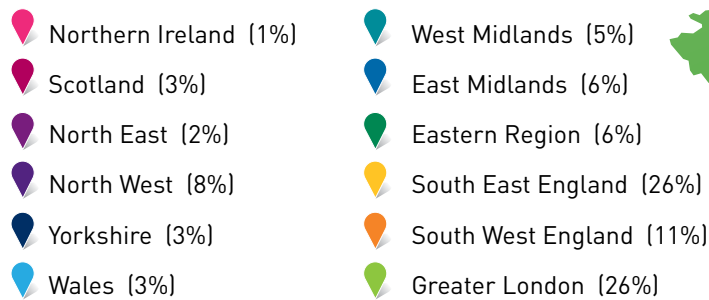
Despite an overall increase in formal reviews, the number of complaints supported, as an overall percentage, decreased by a small margin. Given the buoyant letting market predictably leading to a greater number of complaints being generated, these figures indicate that standard of service provided by registered firms is generally improving.

Lettings Awards	2010	2011
£1 to £99	102	101
£100 to £499	205	333
£500 to £999	25	47
£1,000 to £2,999	29	31
Above £3,000	4	6
Total Value of Awards	£145,900.92	£159,250.40
Average Lettings Award	£399	£307

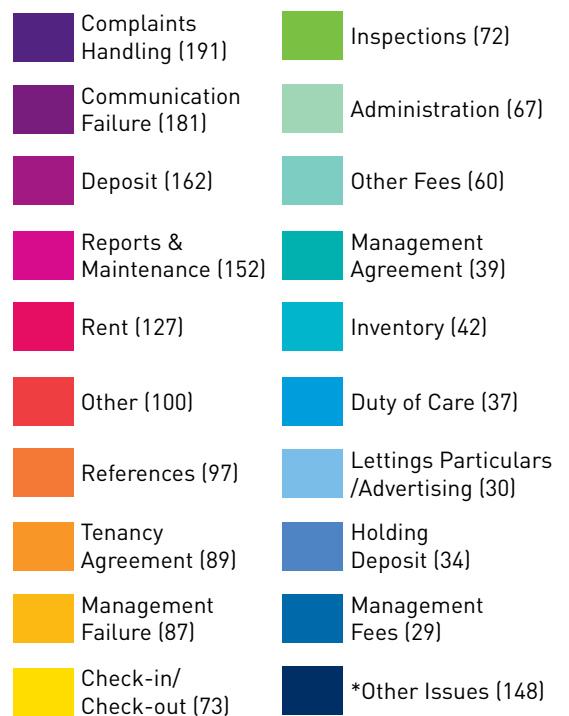
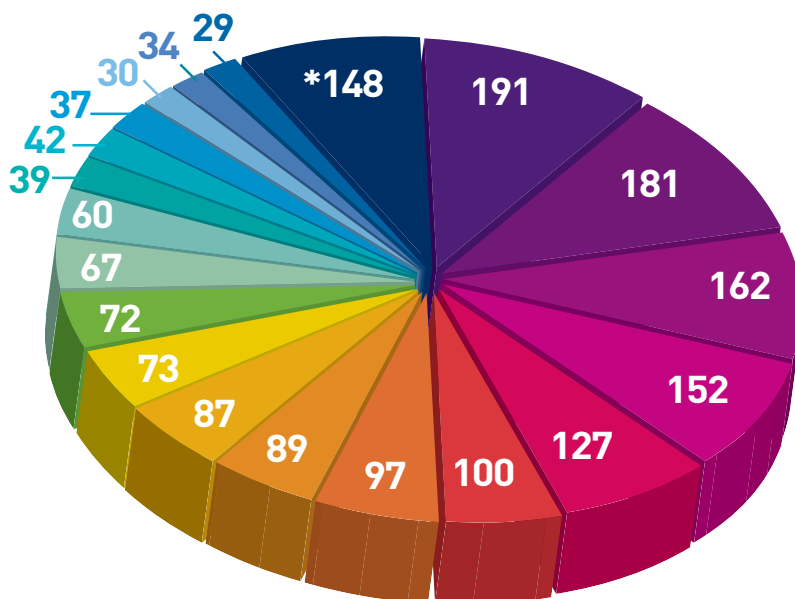
Overall, the total value of awards made by the Ombudsman increased by 9.2%. However, 2011 also saw the average lettings award decrease, providing further indication that overall standards for registered firms are rising. There was also a 44.8% increase in £500+ awards which pointed to an increased severity of the nature of the complaints made against a small number of registered firms.

Lettings Statistics

Formal reviews by area % 2011



Complaint issues 2011



* Other Issues: Rudeness 25, Viewings 21, Keys 20, Renewal Fees 15, Instruction Failure 12, Harassment 11, Conflict of Interest 10, Eviction 9, GSC 5, EPC 4, Electrical Test 3, OTOB 6, Unfair Bias 3, Let Board 1, Withdrawal Fee 1. Discrimination: Offer of Financial Services 0, Racial 2, Gender 0, Disability 0

Lettings

Case Studies

Communication, Repairs & Fees

Complaint

After moving into the property, Mr and Miss A (the Tenants) advised the Agent that the television aerial sockets did not provide adequate reception and that they were unable to access the loft space in order to inspect the aerial. The Agent did not respond to the request and Mr and Miss A installed satellite television the following month. Shortly before agreeing to extend the tenancy five months later, the tenants repeated their request, however, due to a change in their circumstances, Mr and Miss A subsequently asked for the tenancy to be ended early. The Agent responded by informing the tenants that they were liable for a number of early release charges. Mr and Miss A then complained to the Agent about the inadequacies of their communication and requested payment of their television subscription and the early release charges to be waived.

Investigation

The Agent argued that, whilst they had not responded to the initial request regarding the aerial, they had subsequently offered access to the loft, which was declined by Mr and Miss A. They also argued that the early release fees were detailed in their Terms of Business and were in-line with 'accepted' industry standards. My investigation found that the tenants had recorded the aerial

problem in the inventory and followed this up with the Agent five months later. The Agent failed to respond on both occasions and only did so following the fees being questioned. Mr and Miss A did decline an offer to access the loft space however, the Agent's file showed that this offer was made 10 weeks after the complaint was made. Regarding the early release fees, these were recorded in the Agent's Terms of Business, a document which had only been signed by the landlord.

Outcome

The Agent's failure to respond to the Tenants' requests caused them aggravation and inconvenience. However, Mr and Miss A did not demonstrate that they had explored alternative options (such as a signal booster) to resolve the television reception problem before choosing to install satellite television. I was not persuaded that the subscription satellite service represented a necessity rather than a lifestyle choice. Regarding the early release fees, I pointed out that Mr and Miss A would not have been party to the Agent's Terms of Business as they were not the clients. I, therefore, determined that they should pay only those charges outlined in the Tenancy Agreement. I made an award of £150 which was accepted by both parties as being a fair and reasonable resolution.

Learning

Unless the fees and charges are drawn to the attention of the aggrieved party beforehand, an agent should not seek to impose them.

Communication & Repairs

Complaint

After discovering a water leak, Mr B (the Tenant) reported the matter to the Agent who promptly arranged for a contractor to investigate the problem. The contractor determined that the leak was from the flat above and that the electricity supply to the lights at the property should be switched off for safety reasons. Following a period of two months, during which the power remained disconnected and the tenancy came to an end, Mr B raised a formal complaint against the Agent.

Investigation

The Agent's file recorded that, following the initial contractor's visit, they had sent a plumber to the flat above who had found that the water leak was emanating from the flat next door to the one above the property. The Agent reported the matter to the agent who managed that flat however, from this point they failed to pro-actively monitor the situation or keep Mr

B updated. Furthermore, when the Agent was informed that the leak had been fixed, they failed to arrange for a contractor to visit the property to determine whether it was safe to switch the electricity supply back on. Power was finally restored two months after the initial incident. However, before this could occur, it was discovered that the plumber who had attended the property when the leak was first reported, had not returned the keys and so access was delayed.

Outcome

I determined that the failure of the Letting Agent to pro-actively monitor the situation, to keep Mr B updated and to arrange for someone to assess the damage at the property and check whether the power to the lights could be switched back on, led to Mr B suffering avoidable aggravation, distress and inconvenience. Furthermore, I was extremely critical of the Agent for failing to adequately monitor the keys to the property and made an award of £400.

Learning

When the responsibility for overseeing repairs falls to the agent, it is their duty to ensure that these are promptly dealt with. If the landlord is arranging the repairs, agents should always follow up progress. In both instances regular contact should always be maintained with the tenant and the landlord.

References & Section 21 Notices

Complaint

Following the tenant falling behind with the rent, Mrs C (the Landlord) applied to the Court for possession of the property. However, due to a problem with the Section 21 notice served by the Agent, possession was delayed by one month. Mrs C subsequently raised a number of complaints which included the Agent's referencing of the tenant and the Section 21 notice.

Investigation

The examination of the Agent's file found that the Section 21 notice had been signed prior to the execution of the Tenancy Agreement. As a result the Court deemed the notice to be invalid and directed Mrs C to reapply for possession, with the consequence of a further delay. The

Agent's referencing of the tenant also fell short of the acceptable standard as a number of documents were missing, including proof of identity from the guarantor. Furthermore, the guarantor indemnity form had not been completed correctly as the Agent had failed to arrange for the guarantor's signature to be witnessed.

Outcome

I ordered the Agent to pay Mrs C a sum equal to one month's rent, as this debt could have been avoided had the initial Section 21 notice been completed correctly. I also made a further award to reflect the aggravation, distress and inconvenience caused by the Agent's failings. A total award of £2,043 was made which was accepted by both parties.

Learning

Ensuring accurately completed documentation and appropriate supporting paperwork is vital to place a landlord in a position to pursue a tenant for outstanding liabilities. It is the agent's responsibility to make sure the landlord is so equipped.

Rent Arrears & Communication

Complaint

After the tenant vacated the property owing four months rent, Mr D (the Landlord) raised a complaint with the Agent, stating that they had failed to inform him about the increasing debt and, therefore, denied him the opportunity to take action. The Agent's response was that, whilst they acknowledged communication failures, they had assumed that Mr D would have identified the problem for himself from the lack of rent going into his account.

Investigation

The investigation of the Agent's file found that they had referenced the tenant on the basis of financial support from both his partner and a prospective guarantor, but had neglected to get either of them to sign an enforceable document. A number of other serious failings became apparent, such as not assessing and advising Mr D of the financial repercussions of the departure of the tenant's co-contributor to the rent; not suggesting or providing any advice to Mr D concerning the options of issuing Section 8 or 21 notices; providing no records which indicated they had chased the tenant for the debt; not advising or assisting Mr D in arranging for housing benefit to be paid directly to him.

Outcome

I considered that the Agent's failure to understand the housing benefit system and Section 8 and 21 notices, and to, thereafter, advise Mr D appropriately, had led to a lost opportunity for him to reduce his financial loss. I also considered that the Agent's inactions and poor record keeping had caused Mr D significant distress, aggravation and inconvenience. Overall, it was clear to me that the Agent had dealt with the problem in a manner which demonstrated their complete lack of understanding of both the law and the standards required to manage a tenancy. I, therefore, made an award of £5,000 which encompassed all aspects of the Agent's failings.

Learning

All agency staff should have an understanding of the law. Whilst it is accepted that this knowledge cannot be all encompassing, at the least, staff must know when further or more in-depth consideration is needed, or when more formal advice should be sought.

Holding Deposit / Fee of Intent

Complaint

Miss E (the Prospective Tenant) claimed that the failure of the Agent to advertise the property correctly and to represent both her and the landlord properly caused her to withdraw from the tenancy. Miss E requested a full refund of the £1,000 she paid to the Agent to 'hold' the property. The Agent responded stating that the property had been advertised correctly, that the monies represented a 'fee of intent' (not a holding deposit) and that, as she had withdrawn from the transaction, her payment would not be returned.

Investigation

Neither party provided any evidence to support their claims concerning the property advertisements. However, a signed 'fee of intent' agreement was produced which recorded that the £1,000 payment would go towards one months rent, the security deposit and administration fees, but could be forfeited upon the prospective tenant withdrawing from the transaction. Both parties' submissions also indicated that Miss E had withdrawn from the transaction before the landlord had responded to a number of her requests.

Outcome

As Miss E had withdrawn from the proposed tenancy, I considered it fair that she should be expected to incur some financial cost. However, as the 'fee of intent' document stated that part of the £1,000 was for rent and the security deposit, given that the tenancy did not reach fruition, I considered that Miss E had neither a rent nor a deposit liability. As such, I did not consider it fair for the full £1,000 to be retained. As the Agent's file detailed their administration fee (which included referencing costs) at just over £500, I directed them to refund the difference to Miss E to resolve the dispute.

Learning

Where a holding deposit has been taken for a prospective tenancy, the purpose of that deposit, and what deductions will be made if the tenancy does not proceed, must be clearly stated, in writing, by the agent, prior to receiving payment. Deductions for administration, referencing and other fees should be reasonable. However, it is unreasonable for deductions to be made in relation to rent and the security deposit if the tenancy does not proceed.

Holding Deposit & Negotiations

Complaint

Miss F (the Prospective Tenant) complained that, after informing the Agent that she was pregnant, they had provided a poor level of customer service by breaching the terms of the holding deposit and discriminating against her by refusing to refund the holding deposit. The Agent argued that the change in Miss F's circumstances, divulged to them after her offer had been accepted, had inconvenienced them and the landlord, adding that Miss F's future reduced income and potential claim for maternity/housing benefit had left the landlord no option but to withdraw from the tenancy.

Investigation

The Agent's submission letter inferred that Miss F had deliberately withheld details of her pregnancy until after her offer was accepted. However, this inference was not supported by any information included within their file or submitted by Miss F. Furthermore, the Agent provided no evidence that the landlord had instructed them that he did not wish to consider tenants who were in receipt of benefits.

Outcome

I pointed out that it was evident that Miss F was not withdrawing from the proposed tenancy, but was merely informing the Agent that her circumstances were going to change, rather than had changed at the point of offer. Although Miss F claimed discrimination, I was more persuaded that the Agent had failed to provide a service consistent with either fairness or best practice. The terms of the holding deposit agreement clearly stated that if the landlord withdrew from the proposed tenancy, the tenant was entitled to receive a refund of the full holding deposit. I, therefore, made an award equivalent to the holding deposit of £400 to reflect Miss F's financial loss.

Learning

Holding deposits cover reasonable administration and referencing costs incurred by the agent. If a tenancy does not proceed, for whatever reason, it is not acceptable for the agent to claim further costs for inconvenience caused to them rather than the landlord. All agents should provide tenants with a fair service consistent with best practice.

Renewal Fees & Terms of Business

Complaint

After a 10 year relationship with the Agent, Mr and Ms G (the Landlords) decided to move the management of their two properties to another agent. Mr and Ms G provided the Agent with two months' written notice of their intention, to which the Agent responded by advising them that they would be liable to pay ongoing renewal fees of 10% of the annual rent on the anniversary of each tenancy whilst the same tenants remained in the properties. The Agent also withheld one month's rent from Mr and Ms G in lieu the unpaid fees.

Investigation

The submissions provided by both parties revealed that, although the Agent had been taken over by another company during their relationship with Mr and Ms G, at no point were any written Terms of Business produced. The Agent acknowledged the omission but argued that, as their terms of engagement with Mr and Ms G had never been called into question during the previous 10 years, these were legally enforceable terms. However, it was also the case that the Agent's file did not include any indication of what these terms were or any reference to renewal fees prior to termination of the relationship.

Outcome

I commented that, even if a documented renewal clause which allowed the Agent to charge a perpetual fee had been in existence, as no ongoing fee earning activity was being provided, I would likely have considered it to be neither fair nor reasonable. I supported the complaint and determined that the pursuit of renewal fees (and therefore the retention of rental monies) was unreasonable as the Agent had never provided Mr and Ms G with written Terms of Business which clearly set out the fees and charges. I directed the Agent to withdraw their renewal fee invoice and made an award of £1,370.26, which included the withheld rent and compensation for the aggravation, distress and inconvenience caused to Mr and Ms G.

Learning

Any charges which will become due must be actively flagged, in writing, to the client by the agent.

Renewal Fees & Terms of Business

Complaint

Following the property being let for a year, Miss H (the Landlord) was surprised to receive a demand for a further annual renewal fee when her tenants stayed on as periodic tenants. The Agent ignored her subsequent query and, seven months later, with no further contact, issued a final demand. Following further correspondence being issued to the Agent, Miss H raised a formal complaint.

Investigation

After her initial query, Miss H wrote on two further occasions to query the fee to which the Agent failed to respond. Miss H then informed the Agent when the tenants left which occurred prior to the second anniversary of the tenancy. Eighteen months after billing Miss H, the Agent instructed solicitors to pursue debt recovery proceedings for the initial fee and for a second year's annual renewal fee. Miss H then wrote three more times querying the bills and advising that the property had been sold. Once again the Agent failed to respond but did issue a letter indicating their

intention to charge a third year's renewal fee. After informing the Agent that Miss H had contacted my Office, the Agent finally calculated their fees referable to the extent of the periodic tenancy but did not apologise for having ignored Miss H's correspondence or for having pursued her under threat of going to court for substantial sums which related to periods to which they were not entitled to charge.

Outcome

Whilst I was satisfied that the Agent's Terms of Business allowed them to charge a renewal fee for a periodic tenancy, the appropriate clause was contained within the small print of a 17 page contract and had not been drawn to Miss H's attention at the point of instruction or when the contractual term was coming to an end. I considered this to be inconsistent with best practice and to the duty to fully explain fee terms as required by the TPO Code of Practice and severely criticised the Agent for their inefficiency. An award of £750 for harassment was made and I directed the Agent to cancel the outstanding fee.

Learning

If an agent receives a complaint, regardless of whether they consider it to be justified or not, it should be responded to in a timely fashion and in accordance with the Code of Practice. It is simply not acceptable to ignore a complaint about fees and then threaten legal action in pursuit of payment.



I considered that the Agent's failure to understand the housing benefit system and Section 8 and 21 notices, and to, thereafter, advise Mr D appropriately, had led to a lost opportunity for him to reduce his financial loss





...Mr J incurred legal costs in excess of £30,000 and, following the judgement, he raised 39 different complaints against the Agent which he considered had contributed to a proportion of those costs arising



Legal Action & Security Deposits

Complaint

Mr J (the Landlord) had retained monies relating to advanced rent following the end of the tenancy. As a result the tenants took him to Court where the judge ruled in their favour. During this process Mr J incurred legal costs in excess of £30,000 and, following the judgement, he raised 39 different complaints against the Agent which he considered had contributed to a proportion of those costs arising. The core issue was Mr J's assertion that the Agent's failure to provide all of the prescribed information concerning the deposit to the tenants at the start of the tenancy, had resulted in legal action being taken and his subsequent loss of the Court case.

Investigation

Mr J had sent a number of Court papers to the Agent, which included his witness statement. From this witness statement it was apparent that Mr J had instructed the Agent on an 'Introduction Only' basis and that, despite the tenancy remaining in place for over a year and the legal action between him and the tenants taking place during the subsequent year,

Mr J had not raised any formal complaint against the Agent until such times as he had lost the Court case. Whilst this delay prevented a number of issues from being investigated (as they fell outside the prescribed time limit in my Terms of Reference), it was clear that the Agent had failed to provide full documentation regarding the deposit registration to the tenants at the start of the tenancy. However, further investigation revealed that the tenants had taken legal action on the basis that Mr J had taken advantage of a typographical error in one of their letters to argue that he was entitled to retain their advanced rent for a period after the tenancy had ended, and to make deductions to these monies in relation to remedial works.

Outcome

Whilst I supported the complaint that the Agent had not provided all of the required information concerning the deposit to the tenants at the start of the tenancy, I did not conclude that this was the reason for their subsequent litigation. As such, I did not consider that an award of financial compensation was merited.

Learning

When registering the deposit with a tenancy deposit scheme, agents should always ensure that the tenant receives full documentation.

Case Studies

in Brief

Data Protection

This complaint stemmed from the disclosure by the Agent of bank details of the Tenant to an investigation officer from the Audit and Investigation Department of the local Council. Following an investigation of the Agent's file, I was satisfied that they had acted on the firm understanding and belief (based upon the explanations given by the relevant investigating authority), that they were legally obliged to release the information. As a criminal investigation had prompted the request, and as the explanation of the Agent's legal obligations had been provided by the investigating authority, I declined to criticise the Agent for not telling the Tenant about the approach and requesting his permission before releasing the information.

Referencing

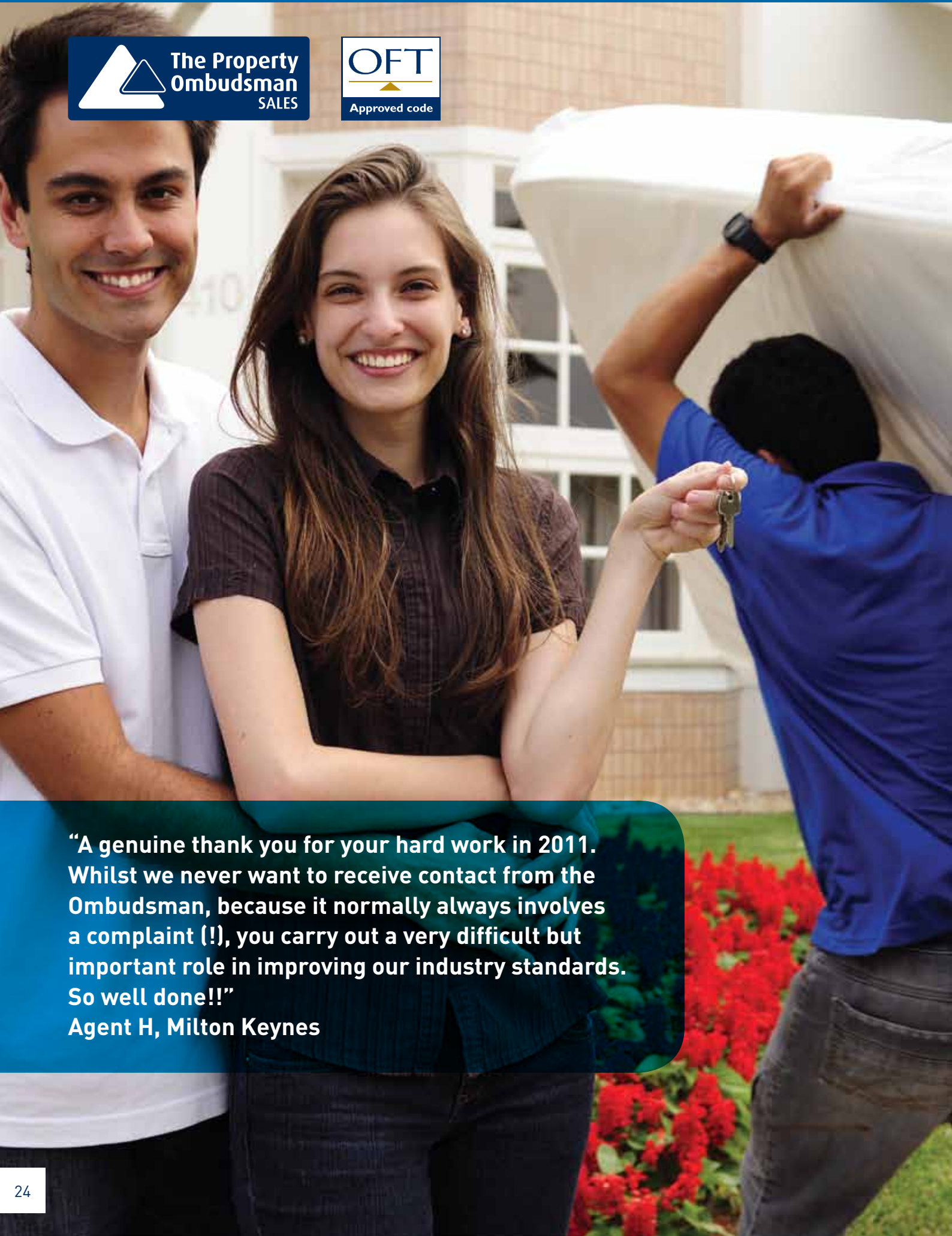
The Landlord complained that the Agent had provided him with tenants who had unsatisfactory references without informing him about those references prior to the tenancy starting. As a result, he considered that the tenants were unable to maintain the rent leading to him having to release them early from the tenancy. The Agent acknowledged some failings on their part and made a goodwill offer of £250 which the Landlord rejected. I found that references had been provided by an independent referencing company who deemed that the tenants could afford to pay the rent. However, despite the referencing provider advising the Agent to view and retain proof of the tenants' previous address for a certain period of time, their file contained no indication that they had done so. I determined that, although the failure of the Agent to seek and retain this evidence could not have prevented the tenants from defaulting on the rent, their shortcoming would have caused, and would continue to cause, the Landlord an element of undue aggravation and inconvenience. As the circumstances of the case merited an award, I reinstated the Agent's goodwill offer of £250.

Inventory, Repairs & Communication

Shortly after moving in, the Tenant complained that the Agent had not provided her with a copy of the Inventory and had failed to fix previously highlighted defects. She also held the Agent responsible for her distress after finding herself locked in the master bedroom for five hours due to a door handle malfunction. Whilst the Agent's file provided no indication of when they had sent the Inventory, it did record that the landlord had caused the delay in repairing the defects. I explained that it was the landlord's responsibility to ensure that the property was in good order and that the Agent was not responsible for the malfunction of the door handle to the master bedroom. However, I did criticise the Agent for not actively communicating about the progress of the repairs and for failing to provide the Inventory at the correct time, and made an award of £150.

Holding Deposit

Following the prospective Tenant's offer for the property being accepted, she claimed that the Agent had refused to refund her holding deposit, despite the fact that she was entitled to these monies, as it was the landlord who had subsequently chosen to withdraw the property from the market. I found that, whilst the Tenant had provided acceptable references, following the landlord accepting her offer she had advised that she was unable to move into the property for a period of three months. Although it was clear that the landlord had withdrawn from the proposed tenancy, he did so after the Tenant had attempted to renegotiate the terms of her previously accepted offer. As the holding deposit had been paid in relation to the initial offer being agreed by all parties agreement, I considered the Tenant's attempts to renegotiate these terms represented a further offer which the landlord was entitled to refuse. As the Tenant was aware of the terms of the holding deposit and was not prepared to enter into the tenancy on the previously agreed terms, I was not satisfied that she had any entitlement to a refund of the holding deposit in those circumstances.



“A genuine thank you for your hard work in 2011. Whilst we never want to receive contact from the Ombudsman, because it normally always involves a complaint (!), you carry out a very difficult but important role in improving our industry standards. So well done!!”
Agent H, Milton Keynes

Sales Statistics

These statistics relate to complaints which progressed to the formal review stage.

Sales Caseload	2010	2011	Increase	% Increase
Workload	646	587	-59	-9.2%
Reviewed	557	570	13	2.3%
Cases Closed	558	570	12	2.2%
Representations	113	136	23	20.3%

Given the difficult selling conditions experienced during 2011, it was not surprising to see a decrease in the number of formal reviews carried out on sales complaints.

Description of Complainants	2010		2011	
	Cases	% Split	Cases	% Split
Seller	377	67.7%	408	71.6%
Buyer	167	30.0%	148	26.0%
Other	14	2.3%	14	2.4%

2011 saw an increased shift towards seller complaints as part of the overall caseload for formal reviews. As many sellers experienced difficulty in selling their property in 2011, this is perhaps not surprising.

Sales Decisions	2010		2011	
	Decisions	% Split	Decisions	% Split
Non-Support	242	43.4%	246	43.2%
Support	316	56.6%	324	56.8%

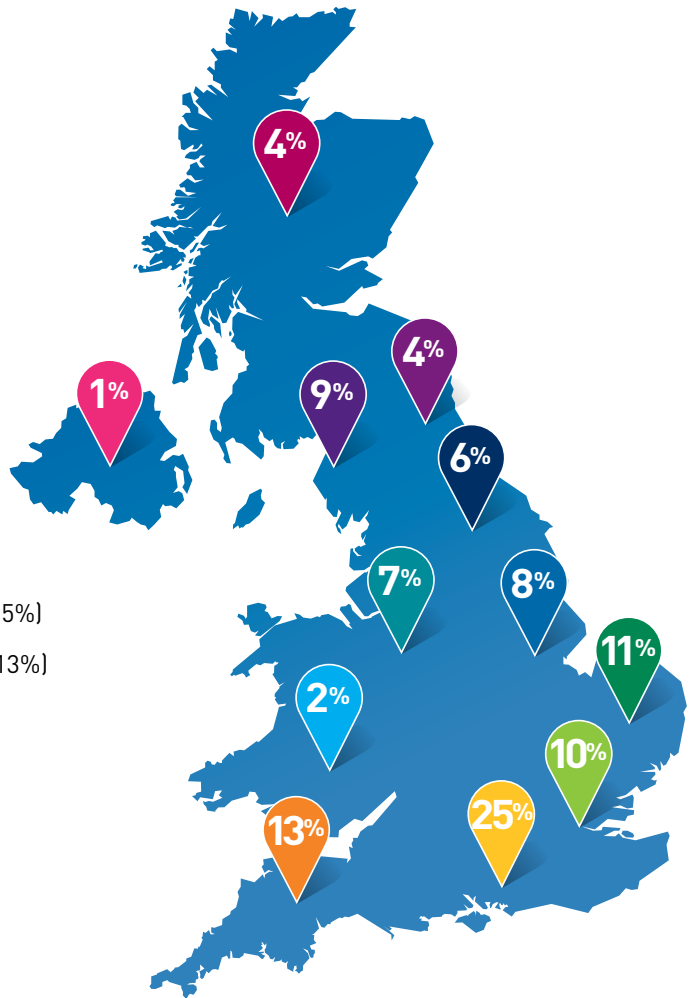
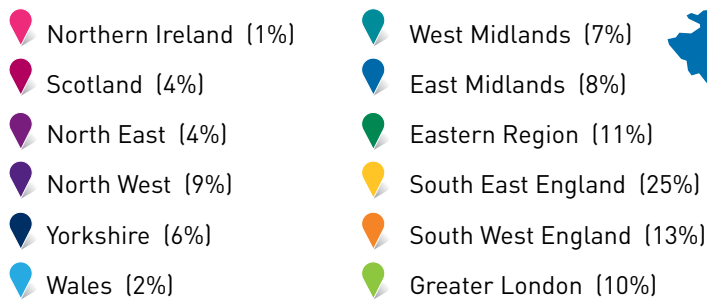
Despite a slight increase in the number of cases formally reviewed in 2011, the proportion of complaints supported remained largely unchanged.

Sales Awards	2010	2011
£1 to £99	93	69
£100 to £499	186	225
£500 to £999	26	20
£1,000 to £2,999	8	5
Above £3,000	3	5
Total Value of Awards	£81,571.60	£91,178.67
Average Sales Award	£258	£281

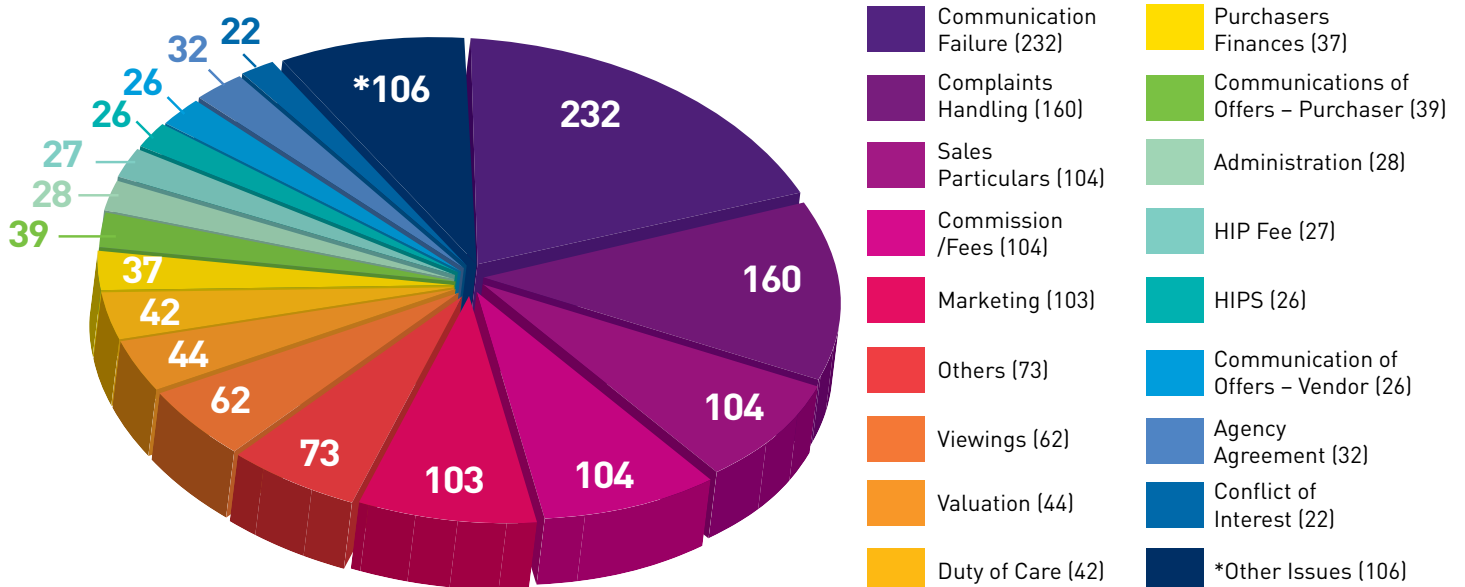
Overall, the total value of awards made by the Ombudsman increased by 11.8%. 2011 also saw the average sales award increase due to the larger volume of awards made under £500. However, there was once again a decrease (of 18.9%) in £500+ awards which indicated the continuing improvement in the service offered to consumers by sales agents registered with TPO.

Sales Statistics

Formal reviews by area % 2011



Complaint issues 2011



* Other Issues: Rudeness 27, Instruction Failure 13, Withdrawal Fee 16, Keys 12, Unfair Bias Towards Other Party 6, Harassment 8, Gazumping 4, Sale Boards 6, Marketing Fees 7, OTOR 3, Deposit 2, EPC 1, ID 1. Discrimination: Offer of Financial Services 0, Racial 0, Gender 0, Disability 0.

Sales

Case Studies

Property Misdescription & a Tenancy Dispute

Complaint

Following their withdrawal from the transaction, Mr and Mrs A (the Potential Buyers) complained that the Agent had not divulged the full details of a local farmer's tenancy claim for occupancy of all of the land attached to the property. Mr and Mrs A said the sales particulars had not included any reference to the dispute, yet the Agent had been aware of the problem six months before they began marketing the property as the farmer's representative had written to the Agent setting out the claim. The Potential Buyers also asserted that the Agent had failed to divulge the extent of the land that the farmer was claiming a tenancy on when they asked the Agent a direct question during the first viewing. The Agent acknowledged that they had received the letter, but said that, as it was unclear whether the farmer had any valid claim on the land, they did not include any details in the sales particulars.

Investigation

My examination of the letter found that, as the dispute had not been resolved by the point the Agent was instructed to market the property, they were not required to make reference to the claim in the sales particulars. However, the Agent's correspondence recorded that they had divulged the existence of the dispute to Mr and Mrs A during the viewing,

but had not confirmed the extent of the land being claimed by the farmer, choosing instead to offer their observation that they had only seen cows in two of the fields in question. It also became apparent that the Potential Buyers did not find out the full extent of the claim until they approached the farmer directly, previous to which they had commissioned a survey and instructed solicitors.

Outcome

As the Agent was previously aware of the full extent of the farmer's claim, I was critical of them for not divulging this information to Mr and Mrs A during the initial viewing. It was also clear that the Potential Buyers withdrew from the transaction as soon as this information became known to them. I was therefore persuaded that, had the Agent told them that the farmer was claiming a tenancy on all of the land attached to the property during the initial viewing, Mr and Mrs A would not have proceeded with the transaction. However, I also considered that the Potential Buyers held a degree of responsibility for the situation arising as they had proceeded knowing that the farmer was utilising some of the land without first satisfying themselves that the property (and all of the land) suited their purposes. Overall, I made an award of £1,102.17, which included 70% of Mr and Mrs A's survey and legal costs and an element relating to distress, aggravation and inconvenience.

Learning

Information which is known by the agent which is of direct relevance to the buyer's decision, and which they are asked a direct question about, is a specified matter under the Property Misdescription Act. Agents are required, both by the law and the Code of Practice, to disclose the extent of their knowledge. Even if an agent is not asked a direct question, situations may arise where their knowledge will be directly relevant to the buyer's decision.

Conflict of Interest

Complaint

Mr B (the Potential Seller) asserted that the Agent had undervalued the property and had then failed to disclose their interest in a company that had made an offer which the Agent had advised him to accept. The Agent denied that they had a financial interest in the company which they had introduced to the purchase.

Investigation

Contrary to the requirements of the Code of Practice, the Agent's file did not include any details of comparable properties to support their valuation of the property. Furthermore, Mr B provided copies of Companies House records which showed that the director of the Agent company was also a partner of the limited liability partnership (LLP) company that had made the offer for the property. Mr B explained that, upon finding out this information, he had withdrawn the property from the market and terminated his agreement with the Agent.

Outcome

Not only did the Agent fail to substantiate their valuation of the property, but they failed to inform Mr B of the clear conflict of interest resulting from their connection with the proposed buyer company. The Code of Practice clearly specifies that any possible conflict of interest must be disclosed to the client and any relevant third party prior to the initial negotiations. In failing to do so, I considered the Agent to be in serious breach of their obligations to Mr B. I made an award of £750 and issued a 'breach' letter to the Agent, who subsequently acknowledged their serious failure and demonstrated that they had put procedures in place to stop any similar incidents from occurring again.

Learning

Section 21 of the Estate Agents Act 1979 specifies what 'interests' must be declared by the agent. Where such an interest exists, Paragraph 10c of the Code of Practice requires the agent to disclose this information, in writing, to all relevant parties at the earliest opportunity.

Duty of Care

Complaint

Mr and Mrs C (the Sellers) alleged that, although they had instructed the Agent to market the property for sale, the Agent had, without their knowledge or consent, marketed their property for rent, let the property to tenants under a 12 month Tenancy Agreement and had accepted both a deposit and rent from the tenants.

Investigation

The Agent acknowledged that the property had been advertised on their website for rent and that they arranged the tenancy. However, they explained that they had expected one of their representatives to become the owner of the property by the time the tenancy was due to start and, although Mr and Mrs C still owned the property at that point, they had allowed the tenants to move in as it would otherwise have caused the tenants a great inconvenience. An investigation of the Agent's file supported the claim that, without Mr and Mrs C's consent, they had marketed the property for rent, arranged a tenancy and had accepted rent and a deposit. The submissions also revealed that the Agent had failed to respond to Mr and Mrs C's subsequent complaints.

Outcome

I considered that the Agent's actions not only breached numerous paragraphs of the Code of Practice but showed that they had seriously compromised their duty of care to Mr and Mrs C. Accordingly, I supported the complaints and made an award of £3,233 which reflected the legal costs Mr and Mrs C had incurred in evicting the tenants and an amount for the distress, aggravation and inconvenience that the Agent's actions had caused them.

Learning

An agent has a duty of care to their client i.e. the person paying their fee. Instructions from another party which may compromise their client's position must not be acted upon and should be referred to the client.

Property Misdescription & the View

Complaint

Following their successful purchase, Mr and Mrs D (the Buyers) complained that the Agent had failed to inform them of a proposed development which would impair the view from the property. Mr and Mrs D considered that the Agent was in breach of the Property Misdescriptions Act and Paragraph 4h of the Code of Practice.

Investigation

Mr and Mrs D stated that the design of the property was intended to make the most of the view and that they had paid a premium for this aspect which was going to change for the worse. As such, they expected the Agent to have been aware of the proposed development, its potential impact on the view and to have informed them of this matter via the sales particulars or during the viewings. The Agent provided their complete file for consideration which included detailed progress notes. However, my

review of all of the submissions found no information which indicated that the Agent had been aware of the proposed development at any point prior to the completion of the sale.

Outcome

I did not consider that the Agent could be held accountable for Mr and Mrs D being unaware of the proposed development and pointed out that this would have been a matter for their conveyancer to investigate. I also made the point that, given that the view had been an aspect that Mr and Mrs D were willing to pay additional monies for, it was within their interest to have established for themselves whether there were any potential plans which could compromise this. Whilst I did not support that issue, as the Agent had failed to address the complaint in accordance with the Code of Practice which had caused Mr and Mrs D avoidable aggravation, distress and inconvenience, I made an award of £100.

Learning

If an agent is unaware of information which is directly relevant to a buyer's decision but is asked a question on that matter, they should clearly state their lack of knowledge and offer advice as to where such information could be obtained. If a complaint is subsequently raised, whether it is considered justified or not, the agent should be deal with it in accordance with the clear procedures and timescales set out in the Code of Practice.



Not only did the Agent fail to substantiate their valuation of the property, but they failed to inform Mr B of the clear conflict of interest resulting from their connection with the proposed buyer company



Property Security & Marketing

Complaint

Shortly after the sale of their property, Mr and Mrs E (the Sellers) raised three complaints against the Agent concerning access to their property, a number of viewings and the provision of the Memorandum of Sale.

Investigation

Mr and Mrs E had advised the Agent that, due to them keeping a large dog and the property's location next to a busy road, under no circumstances was the key to the property be used without their prior permission. However, following an access request by the buyer's surveyor, the Agent failed to check the file and issued the key. The result of this oversight resulted in the dog leaving the house and the surveyor having to take refuge in his car until the dog returned to the property and he was able to shut the door. Fortunately, the dog did not bite the surveyor or enter the road potentially causing an accident.

Unfortunately, it was also the case that the Agent ignored Mr and Mrs E's request for accompanied

viewings, which resulted in a number of occasions where the Agent had telephoned them at their place of work to request that they facilitate the viewing as the potential buyer was waiting on the doorstep. On one occasion this occurred whilst Mr and Mrs E were over 300 miles away on holiday, despite them previously informing the Agent of their travel plans.

Finally, the Agent was unable to provide any evidence to indicate that they had issued the Memorandum of Sale to Mr and Mrs E's solicitors (which, crucially, included a four week timescale for exchange of contracts) or that they had subsequently monitored the transaction and reported information deemed helpful to achieving a successful conclusion.

Outcome

The Agent had previously offered Mr and Mrs E a goodwill gesture of £250 for the issues concerning the keys and viewings. However, given that I had supported all of the complaints made, I did not consider this to be an appropriate resolution. Accordingly, an award of £350 was made.

Learning

When an agent holds the keys to a property and is charged with accompanying all viewings, they have a specific responsibility to ensure that seller's instructions are followed precisely and that the property and its contents are not placed at risk.

“
Given the contents of the Agent's detailed viewing records, I was not persuaded that the neighbour's planning application was the reason why higher offers were not received
”



Conflict of Interest & Planning Proposals

Complaint

Following the sale of the property, the son of the Seller, Mr F, accused the Agent of failing to disclose a conflict of interest. Specifically Mr F asserted that a conflict of interest had arisen as a result of another department within the Agent's offices acting on behalf of a neighbour by submitting a planning request to the local council which had resulted in lower offers being received for the property.

Investigation

The Agent's contemporaneous progress notes recorded feedback from the 29 different potential buyers who had viewed the property and from the buyers themselves. Whilst four of the potential buyers had referred to the neighbour's planning application as a negative aspect, 19 of the potential

buyers sighted the condition of the property in relation to the asking price as the only reason why they were not prepared to put forward an offer or had made a much lower offer. The buyers themselves were also recorded as taking into account that the property required a complete renovation when putting forward their offer which the Seller had accepted.

Outcome

Given the contents of the Agent's detailed viewing records, I was not persuaded that the neighbour's planning application was the reason why higher offers were not received. Nor did I consider that a conflict of interest had arisen, as this would have only occurred if the neighbour was involved in the transaction relating to the property. I did not support the complaint.

Learning

This case emphasises the importance of maintaining contemporaneous and comprehensive records, which include feedback received from potential buyers. Had thorough records not been undertaken by the Agent, a different outcome may have occurred.

Commission Fees & the Introduction to the Purchase

Complaint

Following the property being sold, Mrs G (the Seller) complained that the Agent she had previously instructed to market the property had wrongly claimed a commission fee when it was eventually sold by another agent. The Agent argued that they had introduced the buyer to the purchase and were therefore due a commission fee.

Investigation

It was not disputed that the buyer had viewed the property via the Agent as part of a property themed television programme and that he went on to make an acceptable offer within six months of the termination of the Agency Agreement. The agreement signed by Mrs G clearly stated that

the Agent would be due a commission fee if they introduced the buyer to the property. However, the investigation of the branch file found that the Agent's involvement was limited to accompanying the viewing and that the buyer had subsequently expressed no firm interest in the property.

Outcome

As the buyer had expressed no quantifiable interest in the property following the viewing, I did not consider that the viewing had led to the offer made by the buyer a number of months later. I was, therefore, not persuaded that the Agent had introduced the buyer to the purchase and I directed the Agent to withdraw their commission fee invoice.

Learning

Simply being present at a viewing from which no interest results, does not qualify an agent for a commission fee.

Data Protection

Complaint

A year after selling his property, Mr H alleged that the Agent had provided the address of his new property to an unauthorised third party, which then resulted in that third party threatening him outside of his house later that day.

Investigation

Mr H explained that, due to personal events, the police had advised him to move house in order to protect his and his children's safety and that he had gained the Agent's assurance that they would not release such information to any unauthorised third parties. The Agent denied that they had divulged the address of his new property to a man who had attended their office earlier in the day that the incident occurred. However, it was also the case that the Agent acknowledged that they had failed to satisfy themselves as to the identity of the man in question and that they proceeded to discuss the sale of the property and Mr H to the extent that they did confirm that he had intended to buy his new property from an agent whose offices were situated two doors away.

Outcome

As this information was not in the public domain, I considered that it was personal to Mr H, therefore, by releasing this information to the man in question, I determined that the Agent had assisted him in his enquiries. Whilst, I was unable to reach a decision on whether the Agent did divulge Mr H's new address to the unauthorised third party, I was persuaded that the information they did provide had assisted the man in his objective of obtaining Mr H's new address. Furthermore, I was extremely critical of the Agent for failing to satisfy themselves of the identity of the man before entering into the discussion. I made an award of £100 to reflect distress caused by the Agent's actions.

Learning

Extreme caution should be taken when dealing with any personal information. Such information should only be released with the individual's authorisation or to an appropriate authority through a formal request under Section 29 of the Data Protection Act 1998. All agents should ensure that they are aware of the eight data protection principles which form the core of that Act and understand how these apply to their business.

Commission Fee

Complaint

Following the completion of the sale, the Agent wrote to Mr and Mrs J requesting payment of their commission fee. Mr and Mrs J responded by making a number of allegations which included the property being overvalued and the Agent failing to adequately communicate with them.

Investigation

The property was placed on the market towards the end of January 2010 and by early March 2010 the Agent had sourced a cash buyer who made an acceptable offer. Contracts were exchanged in May 2010 and completion followed in September 2010. Mr and Mrs J did not pay the commission fee on completion and enquiries by the Agent with the sellers' solicitor in January 2011 revealed that they had moved to Spain and were disputing the invoice. The Agent then wrote to Mr and Mrs J stating they had not received settlement and inviting them to pay the commission fee on a 'Without Prejudice' basis. Mr and Mrs J did not pay the fee but proceeded to lodge a formal complaint. The evidence within the Agent's file indicated that they had correctly valued the property and that they had regularly communicated with their clients.

Outcome

I did not support any of the complaints and was of the view that, if Mr and Mrs J had any grievances in relation to the service they had received, they should have raised those at the time as opposed to four months after completion and only after the Agent had pursued them for the outstanding debt. The debt and accruing interest remained outstanding and the sellers had, so far, succeeded in delaying payment of a correctly compiled and legally enforceable invoice by over a year. I commented that, should Mr and Mrs J not settle the invoice without further delay, there was no reason why the Agent should not take the matter to Court.

Learning

Where a fee is disputed, I accept that agents may, in certain situations, want to pursue the matter through the Courts. However, where the matter is referred to my Office, the agent should not continue with that action until I have determined the case. I will also ask the complainant to pay the fee on a 'without prejudice' basis prior to reaching a decision on the matter.

Case Studies

in Brief

Continued Marketing

The Potential Buyers lost over £1000 when the sale collapsed at an advanced stage after the sellers chose to sell to someone else. I found that the sellers had instructed the Agent to continue marketing throughout the sale but had also asked them not to inform the Buyers. This instruction had become active ten days before the sale collapsed and no interest had been generated before that time. Even so I considered that the Agent's actions had breached the Code of Practice as they had failed in their duty to tell the Buyers, in writing, that marketing was to be continued. I made an award of £500 to reflect the Agent's contribution to the failed transaction.

Graffiti

The Seller complained that, following the discovery of graffiti on the outside wall of the property, the Agent's subsequent actions had been unprofessional, had jeopardised the sale and caused her financial loss as well as avoidable distress, aggravation and inconvenience. From the low quality photographs provided by the Seller, it appeared that the graffiti itself was of a similar design to that made popular by the street artist Banksy, a comment made by the Agent and considered by the Seller as unprofessional when she presented them with the photograph. The Agent's file also showed that exchange of contracts had occurred five days after the buyers had viewed the property for the fourth time, which was after the graffiti had been discovered. Furthermore, the file indicated that the wall in question did not form part of the property, as the property was a flat within a housing block. I did not support the complaint.

A Dirty Toilet

The Sellers claimed that the Agent had failed to ensure the security of the keys to the property and that, whilst they were away on holiday, someone had misused the toilet which had caused damage to their 'designer' towels. The Agent stated that they had only shown two viewers around the property and categorically denied that either they or their viewers or their representatives had used the toilet. However, whilst they also stated that they had not released the keys to any other party, the key log on the Agent's file only recorded the keys being released to the Sellers and did not reflect the two viewings. I, therefore, determined that the key records were not accurate and, as such, prevented a proper investigation from being undertaken. Whilst I was unable to determine precisely who had misused the toilet, as the Agent had not demonstrated that they had ensured the security of the keys to an acceptable standard, I made an award of £100.

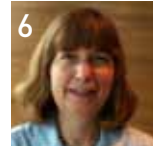
The Misuse of the Property

After satisfying themselves that the Agent would be marketing the property, the Sellers gave them the key and left to go on holiday. They also arranged for a relative to check on the property during their absence. Shortly before their return, the relative visited the property and discovered two employees of the Agent engaged in inappropriate behaviour in a bedroom. A subsequent meeting was arranged at the branch office between the Sellers, the relative, the employees concerned and the Agent. Unreserved verbal and written apologies were provided by the employees who were then dismissed from their employment. However, the Agent was unwilling to accept any further liability for the actions of the employees. It was not disputed that the employees had used the key to the property for a use entirely unconnected with its marketing. As the security of the keys was the Agent's responsibility and that they had failed to ensure they had been used for their proper purpose, I determined that the Agent had failed in their duty of care to the Sellers and made an award of £500.

The Property Ombudsman Council

The role of the Council is to:

1. Appoint the Ombudsman.
2. Set the Ombudsman's Terms of Reference.
3. Ensure the Ombudsman's independence.
4. Approve the Ombudsman's budget.



1. Lord Richard Best OBE, Chairman of the Council is President of the Local Government Association; Treasurer of the Royal Society of Arts; a Trustee of The Tree Council; Chairman of Hanover Housing Association; Vice-Chairman of the All Party Parliamentary Group on Urban Development; Chairman of the All Party Parliamentary Group on Housing and Care for Older People; Treasurer of the All Party Group on Homelessness and Housing Need; Vice President of the Town and Country Planning Association; Chairman of the Private Rented Sector Policy Forum; Patron of the Housing Association Charitable Trust; Deputy Chairman, Westminster City Council Standards Committee. He has previously acted as Chief Executive of the Joseph Rowntree Foundation and as Chief Executive of the Joseph Rowntree Housing Trust. Lord Best has been Chairman of the TPO Council since April 2009.

2. Hilary Bainbridge is currently Waterways Ombudsman (dealing with complaints about British Waterways), a part-time Ombudsman with the Financial Ombudsman Service and the Lay Assessor of complaints about PhonepayPlus. Previous roles include being Deputy Local Government Ombudsman, a Director of Investigations for the Parliamentary and Health Service Ombudsman and a Mental Health Act Commissioner.

3. Peter Bolton-King is Group Chief Executive of the National Federation of Property Professionals (NFOPP). The Group comprises the National Association of Estate Agents (NAEA),

the Association of Residential Letting Agents (ARLA), the Institution of Commercial and Business Agents (ICBA) and the National Association of Valuers and Auctioneers (NAVA). He has 39 years of experience as a Chartered Surveyor and Estate Agent both in the Independent and Corporate sector where he also had particular responsibility for 'best practice'. He sits on many industry and Government working parties and forums, and is in close contact with other European, American and Worldwide property Associations.

4. Noel Hunter OBE is Vice President of the Board of the Trading Standards Institute. He is also chair of the Steering Board of the National Measurement Office and chairs the Board of WCS care group of social care companies. He serves as a Warden (Director) of the Birmingham Assay Office and as a member of the Board of the European Union sponsored EMARS project. He has served as a Director of the National Consumer Council and the Banking Code Standards Board and as a member of the Financial Services Authority Consumer Panel. During 2010 he was also appointed Chair of the Management Board of the Homebuilders Consumer Code.

5. Bill McClintock is the Board Chairman of The Property Ombudsman (TPO) Limited and was appointed in January 2004. He also served as COO for TPO Limited from 2003 until December 2011. He has been connected with estate agency for 50 years and is a Fellow of the Royal Institution of

Chartered Surveyors and a Fellow of The National Association of Estate Agents.

6. April Stroud is a Principal Lecturer in law at Southampton Solent University. She specialises in land law and has lectured in other areas of law such as trusts and regulation. She was awarded Law Teacher of the Year for her innovative book 'Making Sense of Land Law' in 2005. She has also held positions in management and market research and from 2004 to 2006 was a representative on the Hyde Housing Association Board.

7. Vivienne Sugar is a Fellow of the Chartered Institute of Housing. Currently she is Chair of Consumer Focus Wales and is Pro Chancellor of Swansea University. She served 7 years as a local authority Chief Executive (City and County of Swansea) and prior to that was Director of Housing (in Cardiff and Newport Councils). She works part time as Director of her own management consultancy firm.

8. Mary Wilson-Jones, DSC Chair is a Consumer Protection Consultant now specialising in housing and other property issues. Prior to her retirement she worked on all aspects of consumer regulation enforcement at the Office of Fair Trading always working closely with local authority Trading Standards Services. She is an Associate member of the Trading Standards Institute. She is also an independent member of the Glazing Ombudsman Council and serves as company secretary for two Arts charities.

Secretary to the Council:
Stephanie Spencer

The Disciplinary and Standards Committee (DSC)

The Role of the DSC

The DSC was established by the TPO Council to deal with the small number of registered firms breaching the relevant Codes of Practice and/or failing to meet their obligations as TPO members in other ways. A range of disciplinary action can be taken including expulsion from the Ombudsman scheme. The DSC also deals with disciplinary issues relating to sales agents registered with TPO under the Consumers, Estate Agents and Redress Act (CEARA) 2007. The Ombudsman refers cases to the DSC where he has found a serious breach or persistent breaches of the Codes of Practice often when the firm has failed to pay an award. Other referrals come from TPO's Membership Compliance Unit and sometimes from the media, regulators and professional bodies.

2011 Workload

2011 was extraordinarily busy both in terms of the number of cases considered by the DSC and the range of other topics dealt with in order to improve DSC work and the efficacy of TPO overall.

This year the DSC dealt with 33 cases, involving 31 registered (or would be registered) firms. Seven of these cases had been carried forward from 2010. The Ombudsman referred 23 of these cases (17 letting and six sales cases) to the DSC (14 in 2010). The three remaining cases related to membership compliance matters, all involving letting agents.

Outcomes

- Ten expulsions from full TPO Membership.
- As a direct result of DSC intervention ten awards were paid or are being paid in instalments.
- In eight cases the award was not paid and the complainants were provided with the information to help them seek redress through the Courts.

In 2011, for the first time, a registered firm was expelled from full TPO membership because of convictions for offences under consumer protection legislation and the Fraud Act 2006 rather than as a result of a complaint to TPO. The agency, wli.uk.com based in West Bromwich, was downgraded to CEARA membership, pending any decision by the Office of Fair Trading to prohibit the proprietor from acting as an estate agent.

Other Work

Based on its experience in disciplining registered firms the DSC recommended changes, now incorporated into the revised Membership Application form, to emphasise the obligations which firms accept on joining and to request additional information about the arrangements made by lettings agents to safeguard clients' money.



Mary Wilson-Jones
DSC Chair

The Disciplinary and Standards Committee

Mary Wilson-Jones (Chair)
Hilary Bainbridge
April Stroud

Michael Stoop
Gerry Fitzjohn (in attendance)
Bill McClintock (in attendance)

Secretary to the DSC:
Janet Fitzpatrick

Independent Reviewer's Report for 2011

The Role of the Independent Reviewer

The TPO has a three-stage customer complaints procedure. This provides that a consumer or a registered firm who is not satisfied with the service they received from TPO may complain formally, in the first instance to the Ombudsman, secondly to the Chairman of the Council and finally, if necessary, to me. In carrying out my task I am required to, and do, act completely independently of any influence from the TPO. Once I have made my decision, there is no further appeal available within the TPO scheme.

There is no appeal against the final decision made by the Ombudsman on the merits of a case or on any redress he orders. My Terms of Reference limit my consideration to service complaints, e.g. the way complaints have been handled, the efficiency of the work of the Office and the conduct of its staff.

If I uphold a service complaint I may recommend to the Ombudsman that an apology be made and/or that appropriate compensation be paid (equivalent to that which the TPO would itself award against a firm in similar circumstances) for any damage, distress or inconvenience caused by the shortfall in standard of service given. If my recommendation was not accepted by the Ombudsman (which has yet to happen) I would refer the matter to the TPO Council.

The Review Procedure

My review procedure is to conduct a detailed study of the TPO case file, concentrating on the standard of service provided to the complainant at each stage of the original complaint-handling process and during earlier service complaint stages. Where necessary, I also interview relevant members of the TPO staff, including the Ombudsman, and listen to legitimately recorded tapes of telephone conversations between complainants and TPO staff. In my response to the complainant (which I copy to the Ombudsman), I review the conduct of the case,

respond to the points made in the letter of complaint to me, set out my conclusions and, when I uphold the complaint in whole or part, I make my recommendations to the Ombudsman.

2011 Workload

There were a total of 24 service complaints during 2011 (17 in 2010), six of which progressed from the Ombudsman to the Chairman of the Council (seven in 2010). Five of these remained unresolved and were referred to me (five in 2010).

Three of these concerned sales: two were disputes about selling fees, one brought by a seller and the other by an agent, and the third came from a purchaser where the agent had mis-measured the property. The fourth case was that of a homeowner who had been repeatedly approached by an agent but had no intention of selling his property. The fifth came from a solicitor on behalf of a letting agent, where the landlord had refused to pay the agent a withdrawal fee as specified in the contract.

The Ombudsman had partially supported the complainant in all five cases and had proposed some level of compensatory award in four. However, it became apparent on examination that all five of the complaints to me were really mostly about the Ombudsman's decision, his decision-making process or the amount of the proposed award. Having exhausted the case-resolution procedures, the complainants essentially remained discontented with the Ombudsman's process, being unable (despite repeated explanations) to recognise or to acknowledge the limits placed on the Ombudsman's jurisdiction by his Terms of Reference. They then resorted to the service complaint route as a method of further appeal. None the less, I accept such cases provided the complainants have raised a service issue in their submission to the Chairman of Council or to me.

Decisions

This year I found some shortfall in the standard of service given by the TPO in two of the five cases brought to me (zero of five in 2010) and recommended that an apology be made in one (and the Ombudsman did so). In the other, I felt that TPO could have been more helpful to the complainant at the Initial Enquiries stage and I am aware that further guidance has subsequently been provided to staff working in that area. In these two cases I also suggested that the complainants, having rejected the Ombudsman's decision and proposed award in their entirety, might choose to contact their local Trading Standards Office if they remained dis-satisfied with the outcome.

As in previous years, I believe the small number of cases reaching me is a tribute to the efficiency of the TPO's complaint-handling and service complaints procedures.

Additional Work

In September 2010, the Council asked me to extend my role by examining a sample of enquiries and cases brought to the TPO to check that the internal procedures are being properly followed and the Charter response-time targets are being met. I have completed this work for the 12 months to August 2011 and will be reporting my entire findings to the Ombudsman and to Council. However, I am pleased to be able to record that I found no case in which I considered the Ombudsman failed to conform to his Terms of Reference. I found that the prescribed internal procedures were properly followed in the great majority of cases - occasionally minor mistakes were made but apologies were quickly offered and the matter put right. I also found that Charter service targets at each stage of the procedures were generally met, and often exceeded, except when workloads were running significantly above forecast levels, as they did during the latter months of 2010.



Cyril Lanch
Independent Reviewer



I would like to pass on my thanks to all the staff I have dealt with in your office for the very professional service I have received
Mr T, Cheshire



Report from the Board of The Property Ombudsman Limited

Chief Operating Officer

At the end of 2011, I relinquished the post of Chief Operating Officer and this has now been taken up by Gerry Fitzjohn, who also serves as my Vice Chairman of TPO Ltd.

Gerry has been a member of the TPO Board since 2000 and has been of great assistance since assuming the Vice Chairmanship in 2010. By taking on his new responsibilities, he will enable me to concentrate more fully on exploring other areas of development for the company to support its primary role within estate agency.

Financial Results

The financial results are shown in the Financial Report located on page 40 and continue to indicate a healthy position. I am pleased to report another positive surplus for the year, although less than the previous year, with shareholders' funds of £1,436,468 (net current assets £1,257,410). The Board considers it prudent to hold a balance in case of unforeseen circumstances which might impact financially on TPO such as an increasing caseload.

OFT Approval

During 2011 we achieved Stage 1 approval for our Lettings Code of Practice under the Consumer Codes

Approval Scheme (CCAS) operated by the Office of Fair Trading. As part of our progression to full approval, we have started independent performance monitoring of lettings agents, and seek to obtain full approval during 2012.

Since CCAS approval was given to our Sales Code of Practice, the monitoring of sales agents has enabled TPO to provide valuable feedback from consumers. We have found that satisfaction has increased over time and have been able to highlight where improvements to standards are required. This overview has helped to encourage the industry to raise standards and, as the Ombudsman has previously reported, the gravity of complaints coming to him has diminished.

Monitoring is now being applied to the lettings industry and I am sure this will assist in the raising of standards. If registration with an approved redress scheme was a legal requirement I believe much of the current consumer detriment would be greatly reduced. It is a good sign that lettings agents are increasingly coming to TPO – last year saw a 10.8 per cent rise in the number of lettings agency branches offering independent TPO adjudication on redress for complainants. However, we

estimate that only around 60% of lettings agents are members of TPO at present and this is one area that Gerry Fitzjohn intends to address vigorously in his new role.

Membership

Membership at the new flat rate of £170 plus VAT per TPO-registered branch, no matter whether it has single or multiple activities covered by TPO, is still outstanding value. Despite setting ourselves a break-even budget for 2011 we achieved a small surplus but we may dip into reserves during 2012.

I am grateful for the very strong support the scheme receives from the industry. Many find membership of TPO has helped to improve their service to consumers which has enhanced their reputation and professionalism.

Other than a small number of sales agents who have simply registered under the Consumers, Estate Agents and Redress Act to meet their legal obligation to be registered with an Approved Redress scheme, all member agents should explain to consumers that they have voluntarily signed up to full membership of TPO and adhere to its Codes of Practice. Agents could make more of this, especially when their monitoring

report shows they have an impressive track record with consumers.

Letting Agents

The fact that so many agents want to comply with our strict Codes and professional standards shows there is an appetite within the industry for better control of agents' activities, particularly within the lettings arena, and I cannot understand how successive Ministers in the current and previous Governments have failed to read the signs of desire for greater legislative control of rogue agents.

This will become more important than ever as reductions in State- and local authority-funded benefits bring greater competition for more affordable homes in the private rental sector. Never has there been a greater need for more control of lettings agents and never has there been a time when responsible lettings agents have been more enthusiastic to do the right thing by landlords and tenants.

But whilst Government continues to elude us, the Ombudsman, Christopher Hamer, Lord Best as Chairman of the independent TPO Council, Chief Operating Officer, Gerry Fitzjohn, and myself as Chairman of the company Board will do our utmost to draw the various strands of the industry together to ensure the highest standards are applied in estate agency for both sales and lettings.



Bill McClintock
Board Chairman

The role of the TPO Board is to:

1. Manage the business of the Company.
2. Raise sufficient funds from registered firms to administer the scheme.
3. Represent the registered firms.

BOARD MEMBERS (AS AT 31ST DECEMBER 2011)

Bill McClintock (Chairman)
G R Fitzjohn (Vice Chairman)
D Fletcher, Countrywide
M J S Goddard, Belvoir
E P Mead, Douglas and Gordon
D J Newnes, LSL Property Services plc
Lady J Oakes, Connells
M Robson, Andrews
P A Smith, Spicerhaart
M I Stoop, Xperience
M N Williams, Williams and Goodwin
P Bolton-King, National Federation of Property Professionals
D Dalby, Royal Institution of Chartered Surveyors

Financial Report

of The Property Ombudsman Limited (TPO)

Extract from the Accounts

The Property Ombudsman - A Company Limited by Guarantee

Profit and Loss Account for the year ended 31 December 2011

	2011 £	2010 £
Turnover	2,140,309	1,981,872
Cost of Sales	(6,400)	(6,978)
Gross surplus	2,133,909	1,974,894
Administrative expenses	(2,027,972)	(1,710,460)
Operating surplus	105,937	264,434
Other interest receivable and similar income	23,115	23,951
Surplus on ordinary activities before taxation	129,052	288,385
Tax on surplus on ordinary activities	(4,680)	(5,030)
Total incoming resources	124,372	283,355

Balance Sheet at 31 December 2011

	2011 £	2010 £
Fixed assets		
Tangible fixed assets	179,050	156,896
Investments	8	8
	179,058	156,904
Current assets		
Stocks	4,881	3,793
Debtors	178,756	125,597
Cash at bank	2,106,356	1,990,063
	2,289,993	2,119,453
Creditors amounts falling due within one year	(1,032,583)	(964,261)
Net Current assets	1,257,410	1,155,192
TOTAL NET ASSETS	1,436,468	1,312,096
Capital and reserves		
Retained reserves	1,436,468	1,312,096
Members' funds	1,436,468	1,312,096

Approved for and on behalf of the Board 29 February 2012, **W A McClintock - Director**

Summary of accounts:

These summarised accounts may not contain sufficient information to allow for a full understanding of the financial affairs of the Company. For further information, the full accounts, including the unqualified auditor's report on those accounts and the Directors' Annual Report, should be consulted. Copies of these can be obtained from: The Property Ombudsman, Milford House, 43-55 Milford Street, Salisbury, Wiltshire, SP1 2BP

Auditor's Statement

As Auditors to the Company we have reviewed the summarised accounts above and consider that they are consistent with the full accounts, on which we gave our unqualified opinion.

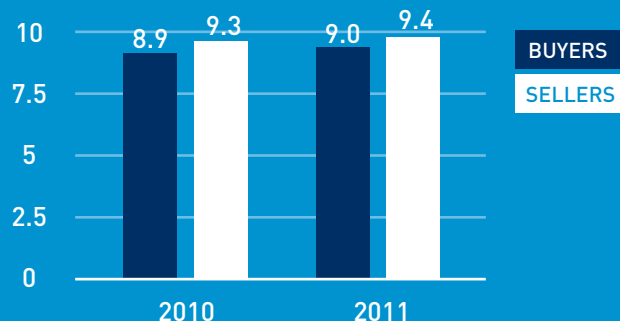
A K Coldwell (Senior Statutory Auditor) for and behalf of Moore Stephens (South) LLP
Date of approval of the full accounts 29 February 2012

Compliance Tables

Monthly Surveys for the OFT Approved Codes

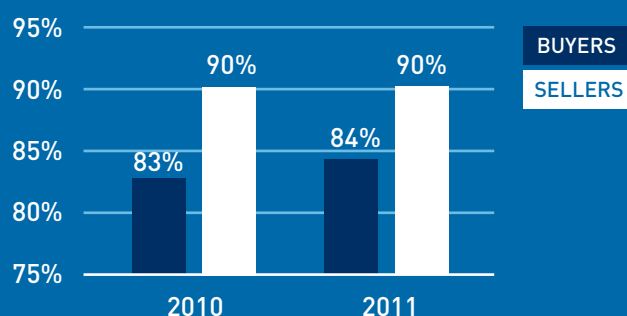
2011 Sales Data

Satisfaction (ratings out of 10)



Buyers and Sellers were asked if the firm (1) Acted professionally at all times (2) Was friendly and understood their requirements (3) Showed a good knowledge of local market conditions (4) Helped in the negotiations between buyer and seller.

Code compliance

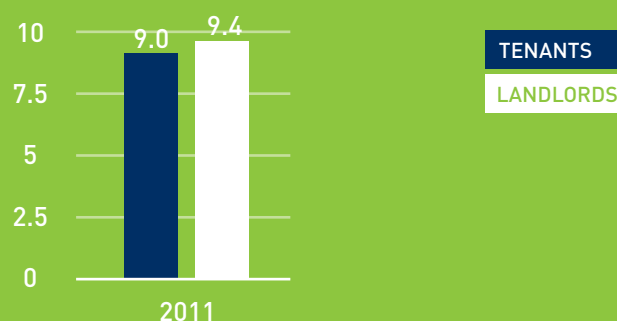


Buyers were asked: Did the firm (1) Make you aware of their membership of the Ombudsman scheme (2) Give you accurate information about properties (3) Tell you if the property was kept on the market after your offer was accepted or if it was later put back on the market (4) Accept your offer without attaching any conditions.

Sellers were asked: Did the firm (1) Make you aware of their membership of the Ombudsman scheme. (2) Clearly explain their fees, expenses and business terms and confirm this in writing before marketing your property. (3) Make clear whether or not they wish to offer other services (such as mortgages) to potential buyers of your property. (4) Ask you to confirm the accuracy of the draft particulars before marketing your property. (5) Agree the viewing arrangements with you and comply with these arrangements. (6) Confirm all offers in writing. (7) Ask you whether or not the property should remain on the market after the offer was accepted.

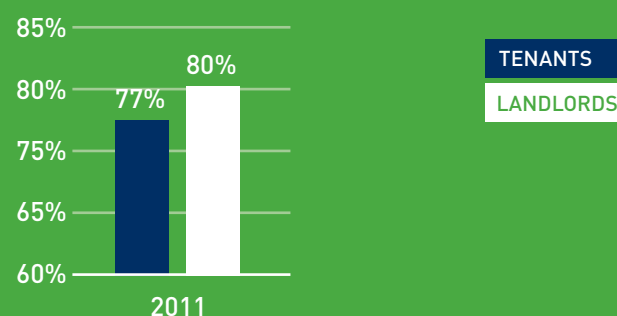
2011 Lettings Data

Satisfaction (ratings out of 10)



Tenants and Landlords were asked if the firm (1) Acted professionally at all times (2) Was friendly and understood their requirements (3) Showed a good knowledge of local market conditions (4) Helped in the negotiations between landlord and tenant.

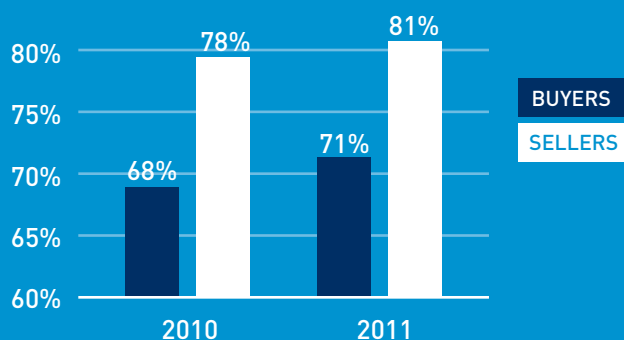
Code compliance



Tenants were asked: Did the firm (1) Make you aware of their membership of the Ombudsman scheme (2) Tell you whether or not the property was still to be marketed after your offer had been accepted until the Tenancy Agreement was in force (3) Confirm that any deposits paid to them at the beginning of the tenancy are held in a separate bank account for clients (4) Give you the opportunity to review the Tenancy Agreement before signature (including terms relating to duration, rent, deposits, fees, charges and repair obligations) (5) Provide an inventory of furniture, fittings and equipment to record the initial condition of the property and/or contents.

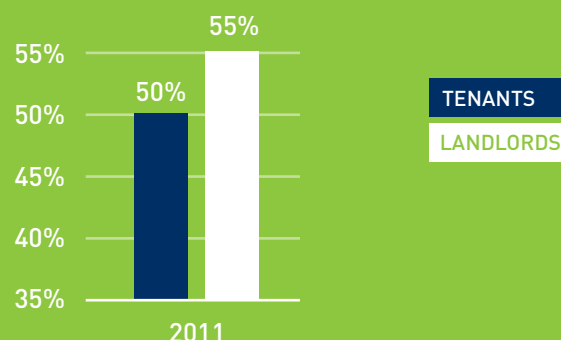
Landlords were asked: Did the firm (1) Make you aware of their membership of the Ombudsman scheme (2) Advise you on a rental figure reflecting current market conditions, supported by comparison with similar properties and locations (3) Provide you with their written Terms of Business, confirming your requirements and clearly explaining all fees and charges (4) Agree the viewing arrangements with you and comply with these arrangements (5) Ask whether or not the property should stay on the market after the offer was accepted (6) Take due care in obtaining references of potential clients.

Awareness of TPO



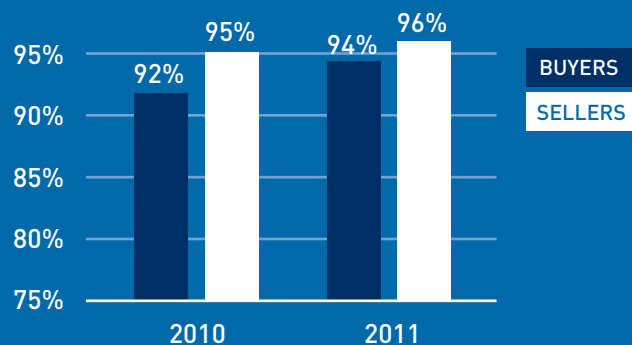
Buyers and Sellers were asked whether the firm made them aware of their membership of the TPO scheme.

Awareness of TPO



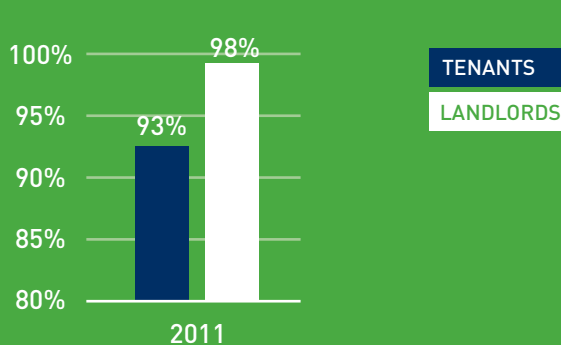
Tenants and Landlords were asked whether the firm had made them aware of their membership of the Ombudsman scheme.

Recommended



Buyers and Sellers were asked if they would recommend the firm to friends.

Recommended



Tenants and Landlords were asked if they would recommend the letting agent to friends.

Sales - Improvements from 2004 to 2011

Satisfaction

Satisfaction	Sellers	Buyers	Overall
2004	8.8	8.2	8.5
2005	8.8	8.4	8.6
2006	8.9	8.4	8.7
2007	9.0	8.5	8.8
2008	9.2	8.6	8.9
2009	9.3	8.8	9.1
2010	9.3	8.9	9.1
2011	9.4	9.0	9.2
Average	9.1	8.6	8.9

Compliance

Compliance	Sellers	Buyers	Overall
2004	87.1%	78.8%	83.6%
2005	88.3%	82.0%	85.7%
2006	88.6%	82.2%	85.9%
2007	88.8%	82.0%	86.0%
2008	89.9%	81.6%	86.5%
2009	89.4%	82.4%	86.4%
2010	89.6%	82.8%	86.8%
2011	89.9%	84.4%	87.1%
Average	88.9%	82.0%	85.4%

TPO Staff List

As at 31 December 2011

Title	Name
Ombudsman	Christopher J Hamer
PA to Ombudsman	Stephanie Spencer
Senior Finance Assistant Finance Assistant	Louisa Dawson Anne Hall
HR & Facilities Manager Office Administrator /Receptionist	Sue Hurst Bob Burke
Senior Case Officers (Team 1)	Colin Dixon Josephine Bailey
Team 1 Case Officers	Alan Bowers Jonathan Tice Adam West-Webbe
Senior Case Officer (Team 2) Team 2 Case Officers	Jane Reed Frances Forster Amy Graveson Patrick Lewis Sandra Pooke (Data Protection Officer) Christine Rowland-Jones Matthew Tucker
Senior Case Officer (Legal)	Kate Chandler

Title	Name
Senior Case Officer	Maria Evans
Communications Manager /Case Officer	Peter Habert
Case Management Manager Case Management Assistant Manager Case Management Team	Amanda Stiggants Joanne Beatty Roz Butcher Chloe Doak Lynn Howlett Natasha Russell Stephen Wells
Initial Enquiries Manager Initial Enquiries Assistant Manager Initial Enquiries Team	Sarah Sartin Debra Aitken Jennifer Cree Martin Noke Susan Russell Kimberley Saunders Annemarie Simpson-Wild Martin Wells Laura West Karen Whyman Kirstie Williams

TPO Membership

Chairman of TPO Board	Bill McClintock
Vice Chairman of TPO Board	Gerry Fitzjohn
Membership Manager	Emma Harris

Senior Membership Administrator Membership Administrator	Nicole Lake Elizabeth Baker
Membership Compliance Manager Membership Compliance Senior Administrator	Janet Fitzpatrick Anne Ing

Customer Satisfaction

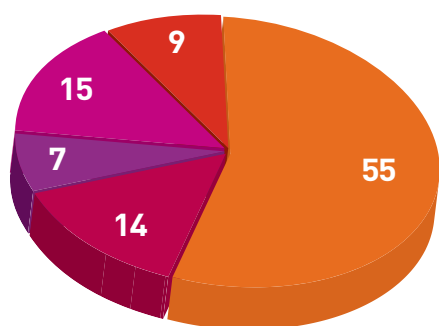
Survey 2011

As in previous years, surveys of customer satisfaction with the TPO service were conducted by an independent company who issued questionnaires to sample complainants and registered firms who had cases formally reviewed and closed in 2011.

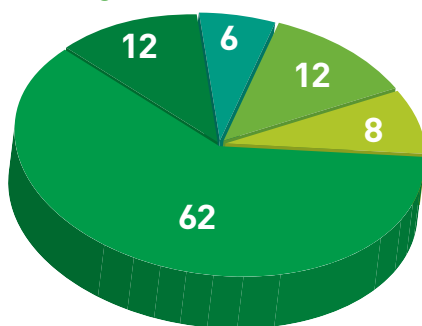
We asked Complainants...

1. Did the registered firm clearly explain their membership of TPO and your right to a free independent review?

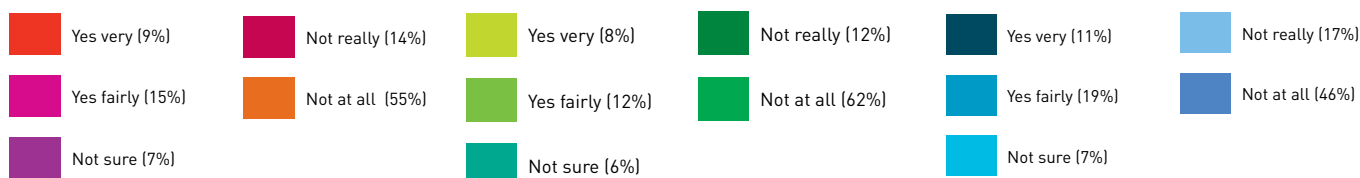
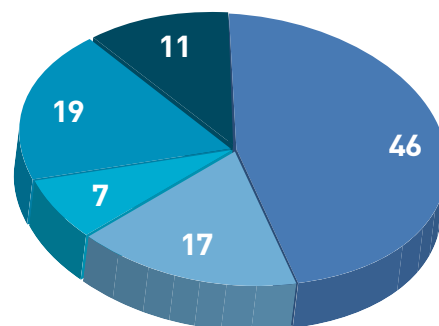
Overall



Lettings

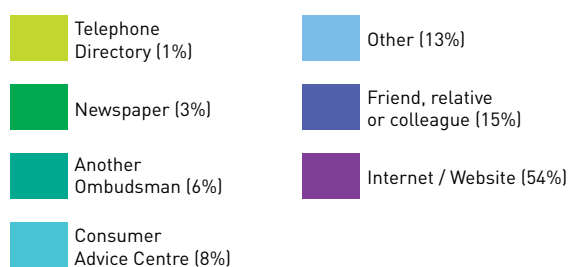
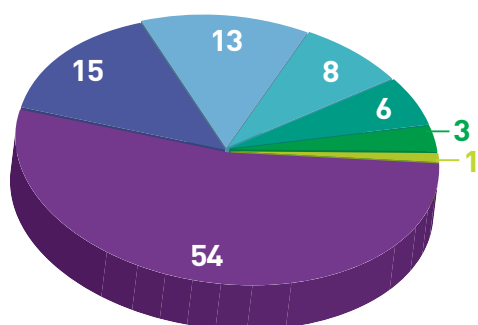


Sales



The results show that many registered firms do not take the time to explain the additional consumer protection benefits that their TPO membership provides to their clients.

2. Where else have you heard about TPO?



Unsurprisingly the results show that the internet is increasingly becoming the single most popular information source for consumers.

We asked both Complainants and Registered Firms...

(Percentage of respondents answering 'Yes Very' or 'Yes Fairly')

- | | |
|---|--|
| 1. Did TPO clearly explain how they would handle the complaint?
Complainants 85%, Registered Firms 95% | 5. Were you satisfied with the time taken to resolve the complaint?
Complainants 33%, Registered Firms 85% |
| 2. Did you find TPO's guidance helpful?
Complainants 75%, Registered Firms 93% | 6. Did TPO clearly explain the reasons for the Ombudsman's decision?
Complainants 73%, Registered Firms 94% |
| 3. Did TPO keep you well informed throughout the process?
Complainants 82%, Registered Firms 84% | 7. Did you feel that the Ombudsman's decision was reasonable?
Complainants 32%, Registered Firms 82% |
| 4. Are you satisfied with the way TPO processed the complaint?
Complainants 53%, Registered Firms 90% | 8. Are you satisfied with the amount of any award?
Complainants 25%, Registered Firms 78% |

Much of TPO's work concerns managing disappointment. Questions 7 and 8 indicate a general dissatisfaction with decisions and the level of award. However, question 6 indicates that the reasoning behind the decision and award was clearly explained. Whilst it is accepted that one person's view of the extent of that disappointment will invariably be different to another person's view, the reality is that complainants whose complaints were not supported were more likely to express their dissatisfaction than those whose complaints were upheld.

Questions 3, 4 and 5 also indicate that, whilst the level of complaints increased (resulting in a delay in reviews being completed), TPO made sure both parties were kept fully informed throughout the process.

Surveys are a valuable source of information regardless of whether the results are favourable. TPO will continue to monitor complainant and registered firm's responses through a Quality Assurance Group, which will regularly consider survey results with a view to improving the service offered.

Consumer Enquiries Survey 2011

TPO also issues surveys to consumers at the initial enquiry stage, when it has been determined that their complaint falls outside of the Ombudsman's Terms of Reference.

We asked consumers...

(Percentage of consumers answering 'Yes Very' or 'Yes Fairly')

1. Was your call answered promptly?

68%

2. Were the staff polite, helpful and responsive?

63%

3. Were you given clear information to answer your questions?

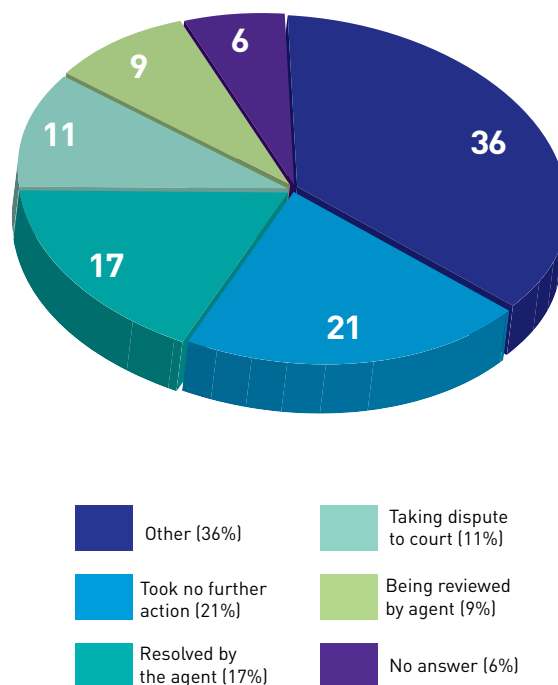
49%

4. Overall are you satisfied with the TPO service to date?

41%

These results should be considered within the context that TPO was unable to progress the dispute at the stage that the survey was completed. Understandably in many cases would be complainants remained unhappy.

What happened to your complaint after contacting TPO?



www.tpos.co.uk



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