THE OMBUDSMAN FOR ESTATE AGENTS

O-E-A

Ombudsman

www.oea.co.uk

2001
ANNUAL REPORT

The Scheme

The Ombudsman for Estate Agents (OEA) Scheme became effective on 1 January 1998. The Scheme is open to all those firms with a principal, director or partner who is a member of the National Association of Estate Agents (NAEA) or Royal Institution of Chartered Surveyors (RICS); to all corporate estate agents - defined as those who are subsidiaries of a bank, building society or insurance company, or are themselves quoted on the Stock Exchange; and to other estate agents who are sponsored and seconded by existing members.

The OEA Scheme offers an independent service for dealing with disputes between Member Agencies and consumers who are actual or potential buyers or sellers of residential property in the UK.The Ombudsman is independent of the Member Agencies and provides a free, fair and impartial review of complaints falling within his Terms of Reference.

A Consumer Guide, available in all the Offices of Member Agencies, states:

"Your complaint may be considered by the Ombudsman where you believe a Member Agency has ...

... infringed your legal rights or not complied with the "OEA Code of Practice"

... treated you unfairly

... been guilty of maladministration (including inefficiency or undue delay)

in a way that results in you losing money or suffering inconvenience.

If the Ombudsman cannot help you because your complaint falls outside his Terms of Reference, he may provide advice as to any alternative procedure available to you."

The Consumer Guide makes clear what types of complaint fall into this last category.

The Ombudsman will not normally review a case until the internal complaints procedure of the Member Agency involved has been exhausted. The Office of the Ombudsman will advise how to achieve this.

Also available is a Code of Practice. Its provisions are mandatory on Member Agencies.

The Office Staff in January 2002 was:

Ombudsman	Mr Stephen Carr-Smith
Case Officer (Legal)	Mrs Kate Chandler
Case Officers	Mr Gordon Morris
	Mr Mike Thorne
Case Manager	Mr John Gray
Case Management Officers	Mrs Tracey Baldwin
	Miss Linda Jarvis
Initial Enquiries	Mrs Sue Hurst
	Mrs Lucy Fellows
	Mrs Sally Bradley
	Miss Jane St John Earl
	Miss Anthea Aireton
Office Manager	Mr Gordon Morris
Membership Secretary	Mrs Margaret Dinnis

Ombudsman for Estate Agents

MEMBER AGENCIES

A W Vint & Son
Abbey Properties
Abbott & Abbott
Accent Properties
Adair Paxton
Adams & Jones Estate Agents
Addisons
Adrian Dowding
Adrian Noad
Adrians
Aitchisons
Alan Cooke Estate Agents
Alan Cooper Estates
Alan Francis Estate Agents
Alan Kirkham
Alex Neil & Co
Alexander Reid & Foster
Alexander Watson
Alexanders Residential
Allan Morris
Allen Briegel
Amos & Dawton
Anderson & Co
Andre Lanauve Property
Andrew Grozewood
Andrew Louis
Andrew Morris
Andrews
Andrews & Robertson
Andrews Estate Agents
Anthony Newman & Son
Antony Wilson & Partners
AP Sales
Arden Nicholson
Armstrongs Estate Agents
Armstrongs Estate Agents
Arran Estate Agents
Arthur Wheeler Estate Agents
Ascot & Co
Ashley & Peck
Ashley Adams
Ashley Jones & Partners
Ashmore & Co
Ashtons
Aspen Residential Services
Astley Samuel Leeder
Aston (Estate Agents) Ltd
Aston Mead
Atkins Estate Agents
Atkinsons Residential
Austin Gray
Aylesford International Property Consultants
B Bailey & Co
B S Bennett
Ball & Partners
Ball & Percival
Banbury & Ball
Bankside
Barbara Ziolor Estate Agents
Barkers
Barlow Cordey Property Services
Barnard Cook Wood & Loach
Barnfields
Barons Property Services
Barrie Alderton
Barry L Hawkins
Barton Wyatt
Bartram & Co
Bartram's Estate Agents
Baylies & Partners
Baytree Estates
Beal & Co
Beaney Pearce
Bedfords
Belchamber & Co
Bendall
Bennett Jones Partnership
Bentons
Beresfords Residential
Bexley Miles & Holland
Bill Jackson
Bishop Estate Agents
Blacklers
Bladon Sears
Blake & Blake
Bloxham & Barlow
Bonds of Thornbury
Bonett's Estate Agents
Boothroyd & Co
Borough Mall Estate Agents
Bowes Mitchell Estate Agents
Boxall Brown & Jones
Boyce Allen
Boydens
Bradford & Bingley
Bradleys
Bramleys
Brewer & Brewer
Brimble Lea & Partners
Brooks Peacock
Brookside Property Services
Brownhill Vickers
Browns
Browns Property Services
Brozen & Co
Bryan Davies + Associates
Bryan Gaskill & Co
Buckell & Ballard
Bullock & Lees
Burchell Edwards
Burford Jordan
Burlsmar Estate Agents
Burnells
Burns & Co (Magherafelt)
Burns & Webber
Burridge Estate Agents
Burrows Estate Agents
Buttons & Whay
Burwood Marsh Limited
Bury & Hilton
C G Spratt & Son
Cable & Webster
Cairds the Estate Agents
Calcutt Maclean Standen East Kent
Calcutt Maclean Standen West Kent
Campbell Estate Agents
Cantor & Francis
Cardwells Estate Agents
Carltons Estate Agents
Carol Harvey Estates
Case & Dewing
Castles
Cawood Jeffries
Cedar Estates
Central Park Estates
Chaffers
Chainmakers
Chamberlains
Chambers Estate Agents
Champion & Co
Chancellor & Sons
Chancellors
Chandlers Estate Agents
Charles J Robinson & Co
Charles Walker (Residential) Ltd
Charlesworth Estates
Chattison Davies
Chequers Estate Agents
Cheshire Estate Agents
Chesterfield
Chilterns Ltd
Chris John & Partners
Christopher Morris
Church & Hawes
Churchill
Churchill Estate Agents
Churchill Estates
Churchill
Churchills
Churchills Estate Agents
Clarets Estate Agents
Clark Franks Independent Estate Agents
Clarke & Stewart
Clarke Gammon
Clive Austerberry Limited
Clive Lawrence & Co
Clive Watkin Partnership
Cole Rayment & White
Colette Gunter Limited
Colin Rickard
Colston & Colston
Connell
Cooke & Co Estate Agents
Cooney and Crane
Cory & Co
Cottons
Country Properties
Countrywide
Countrywide Franchising
County Estates
Courtenay Estate Agents
CPH Property Services
Cranswicks
Cross & James
Cumberland
Cundalls
Curchods
Curtis Haines
Curtis Haines
D B Roberts & Partners
D M Nesbit & Co
Dafydd Hardy Estate Agents
Danette Estate Agents
Daniel McGeown
Daniels Estate Agents
Dart & Partners
David Ball Agencies
David Barton
David Berriman
David Brownall Estate Agents
David Davies Estate Agents
David Evans Estate Agents
David J Hawker
David Jaffe Partnership
David James
David James Estate Agents
David Rhys & Co
David Richings Estate Agents
Davidson Partners
Davies & Partners
Davies Craddock
Davies, White & Perry
Davis & Latcham
Davis Brown
Davis Tate
Day Morris Associates
Dedman Property Services
Denford & Son
Denison's Estate Agents
Derek J Rolls
Derek Spiers & Co
Derek Wood Residential
Dexters Estate Agents Limited
Dickinson Bowden
Dillons
Dixon Porter
Dockside Property Services
Domus Nova Limited
Donald Cope & Company
Douglas & Gordon
Douglas, Lyons & Lyons
Dove Davies & Partners
Downer & Co
Drawflight Estates Ltd
Drewns Distinctive Homes & Character Cottages
Drivers & Norris
Duncan Yeardley Estate Agents
Durrants
Eastcoler Estate Agents Ltd
Easylet
Eaton Estates
Eckersley White
Eden Group Property Services
Edward Gallimore
Edward Mellor
Edwin Watson & Son
Eley Long & Co
Elphick Estate Agents
Elwood & Co
Emersons (Estate Agents) Ltd
Eric Marchant-Parcham
Essex & Barrell
Ewing Self
Ewings
Falcon Property Services
Faulkner
Feather Smailes & Scales
FPS Estate Agents
Finlay Brewer Limited
Finna Estate Agents
First Residential Ltd
Fisher Westhall
Fiske Estate Agents
Fletcher Estates
Foresters Ltd
Fortnam Smith & Banwell
Fosters Property Services
Fowlers
Fox-Kirk's Estates
Francis Comes
Frank Harris & Company
Frank Hill & Son
Fraser & Co
Fraser Reeves Estate Agents
Fraser Wood Mayo & Pinson
Fredk G Hair & Son
Friends Provident
Frost & Co (Parkstone) Ltd
Frost's Estate Agents
Fuller Gilbert & Company Limited
Fulljames & Slade
G A Key
G Crossley & Son
G M Thompson & Co
Gadsby Orridge Limited
Gareth L Edwards
Garner Lamb
Garrett, Anderson & Partners
Gary Berryman Estate Agents
Gaston Taylor Estate Agents
Geoff Foster & Daughter
Gerald R Vaughan Estate Agents
Gibbins Richards & Co
Gibson Gammon
Gibson Gammon
Gilbert & Thomas
Gibson Bailey
Gibson Bailey & Partners
Glenn Flegg & Company
Goddard & Co
Goddard & Jones
Godfrey & Barr
Goldings
Goldsborough Estates
Gordon Vick & Partners
Graham Batt Estate Agents
Grants of Ringwood
Granvilles
Graves Son & Pilcher
Graveson Estate Agency
Green & May Estate Agents
Greenfield & Company
Gregory and Company
Gregory Residential
Gregson & Bellfield
Greys Estate Agents
Grier & Partners
Griffiths & Charles
Grounds & Company
Guardian Property Services
Gunterton Palmer
Guy Sherratt & Associates
H C Blake & Co
H for Homes
H M Lawrence
H W White
Haigh & Sons
Halifax Estate Agency
Hamptons
Hardimans
Harris & Company
Harris Lamer
Harrison Estate Agents
Harrison Murray
Harrods Estate Agents
Harry Sutcliffe
Hassett Estate Agents
Hawkins Estate Agents
Healy Simpson
Henry Smith
Henshaws Estate Agents
Hendson Humphries
Hilbery Chaplin
Hillier Wilson
Hillreed Estate Agency Limited
Hobbs & Webb
Hogarth Estate Agents
Holmes & Co
Holmes & Jardin
Holt & Osborne
Homestraight Limited
Honeywell Chartered Surveyors
Hoopers
Howick & Brooker Partnership
Hudson Moody
Hugh Grover Associates
Humphreys & Orr
Humphreys of Chester
Hunters (Yorkshire) Ltd
Hunters Estate Agents
Hunters Estate Agents
Hurford Salvi Carr
Hydes of Bristol
Ian Gibbs
Ian Smith Estate Agent
Ians Property Services
Inghams Estate Agents
Inman Residential
Irving & Sons
Irwin Fisher (Barking)
Isard & Partners
Ivan Rose
J Merlyn Pugh
J R Property Services
Jackie Oliver & Co
Jacksons
Jacksons Estate Agents Ltd
Jacobs and Hunt Estate Agents
Jager Long
James Anderson (Estate Agents) Ltd
James Burling Estate Agents
James Eley & Son
James Kenrick & Co
James Stuart Estate Agents and Valuers Limited
James Wilson & Son
Jason Whichelow Estate Agents
JDM Estate Agents
Jeffery Jones Partnership

Jeffrey Nemmie & Co
JHK Homes Limited
Joan Hopkin Estate Agent
John Arden & Company
John Bray & Partners
John Brown & Co
John Chivers Residential Ltd
John Couch "The Estate Agent"
John Fisk Company
John Fitton Independent Estate Agent
John G Dean
John Hall Estate Agents
John Nash & Company
John Sankey
John Shepherd
John Smale & Co
John Stokes
John Williams Land & Estate Agents
Jon Coombes Estate Agents
Jones Peckover
Jubb & Co
Kavanaghs
Kaye Mackenzie Estate Agents
Keatons Estate Agents
Keats Fearn
Keats Harding
Keats Hilder
Keats Marshall Bendall
Keats Meehan
Keats, John Dowler
Keith Ashton Estates
Keith Chough Properties
Kelly Homes (UK) Ltd
Kennedy Estate Agents
Kent Estate Agencies Ltd
Kevin Henry Estate Agents
Kings Estate Agents
Kingsleys Estates Ltd
Kingston & Grist
Kingswood Estate Agents
Kingswood Estates
Kit Johnson Residential
Knight Goodwin
Knightsbridge Estate Agents & Valuers
L J Boyce
Lanes Property Agents
Lanes Property Agents (MK) Ltd
Lang & Co
Langford Russell
Lanyons
LDG
Leaper Stanbrook
Legal & General
Lenwell Property Services
Lewis Bond (Estate Agents)
Lifestyle Property Services Limited
Litchfields Limited
LMD Properties
Lords Estate Agents
Lucas Estate Agents
Ludlow Thompson
Lynch & Company
M Coleman Estate Agents
MAC Estates
Maggs & Allen
Malcolm J White
Mansbridge & Balment
Marc Allen Estate Agents
Marchand Petit
Mark Templer & Company
Marler & Marler
Marshall Buck & Casson
Marshall Rodgers
Marshall's Estate Agents
Martin Treasure
Martyn R Cox & Co
Masken Estate Agents Ltd
Masons of Billingshurst
McAllisters
McClelland Salter
McHugh & Co
McKee & Co
McKenzie Estate
McKillop & Gregory
McRae Property
Meacocks & Jones
Mead Thompson
Meeching Estate Agents
Meldrum Salter Edgley
Melvyn Danes
Meridian Estates
Merryweathers
Michael Applegate & Partners
Michael C Adams
Michael Everett & Co
Michael Gould Property
Michael Gregory
Michael Hardy & Co (Wokingham)
Michael Jones & Co
Michael L Green Estate Agents
Michael Moody Residential
Michael Moon Estate Agents
Michael Tims & Co
Michael Vernon
Michael Weller & Co
Mike Aston & Associates
Mike Dobson (Estate Agents) Ltd
Miles & Son
Miller Metcalfe Kirkpatrick
Millers of Hayling
Mills and Company
Mitchells Estate Agency
Moore Allen & Innocent
Morgan Beddoe
Morgan Berry
Mortimer Gorst & Ross
Movingspace Limited
Moving Works
Mullucks Wells & Associates
Mundy & Co
Murrays Estate Agents
Neal Smith Partnership
Neal Sons & Fletcher
Network Homes
Newey Property
Newman Estate Agents
Newstead Estates
Newton & Derry
Newton Derry & Moore
Niall Maneely
Nicholas Belt (Estate Agency)
Nicholas C Evans
Nicholas Craddock Estate Agents
Nicholas Zorab Estate Agents
Nicholsons Estate Agents (Epping)
Nick Carver Estate Agents
Nigel Dixon & Co
Nigel Legrand
Nigel Naish & Co
Nock Deighton
Norgate Surveyors and Estate Agents
Norman Hope & Mann
Normans Estate Agents
Northfields Estates
Northumberland & Cumbria Estates
Nottingham Property Services Limited
Nye & Co
Ocean Estate Agents
Oliver Miles Estate Agents
Oliver Minton Estate Agents
Parkers Estate Agents
Parkers Property Services
Patchings
Paul Fox
Paul Jackson Auctioneers & Estate
Paul Jeffreys Independent Estate Agents
Paul Johnson Property Consultants
Paul Murray (Town & Country Properties)
Paul Twyneham & Co
Paul Wallace (Residential)
Payton Jewell Caines & Harry
PDQ
Peachey Look
Peacock Christmas
Pell & Co
Pethay Country Property Search
Peter Alan Limited
Peter Davies & Co
Peter Hampshire Period Homes
Peter James Estates
Peter Large Estate Agents
Peter Mountain
Peter Roffey
Peterman Associates Ltd
Philip A Chapman
Philip Laney & Jolly (Malvern)
Philip Phillips & Co
Phillips & Stubbs
Phillips Residential Ltd
Phillips Smith & Dean
Pike Smith & Kemp
Pilgrims
Portees Estate Agents
Portfield Gassard & Wright
Porter & Co
Premier Move
Preston Bennett Partnership
Primedale Residential
Priors Estate Agents
Proffitt & Holt Partnership
Property Express
Property Zone
Pulver Carr Partnership
Putterills of Hertfordshire
Putterills of Hertfordshire (Hitchin)
Putterills of Hertfordshire (Knebworth)
Putterills of Hertfordshire (Welwyn)
Putterills of Hertfordshire (Wheathampstead)
Pygott & Crone
Quealy & Company
Quilliam Property Services
R H Ellis & Sons
Rainbow Reid Estate Agents
Rand Estate Agents
Rash & Rash
Ravens & Co
Raymond Bushell Limited
Reads Davies
Redferns (Topsham/Exmouth)
Redwell Estates
Rees Richards & Partners
Rennick Stark Partnership
Renshaw Estates
Rentals & Sales
Ribchester Associates
Richard Babington & Partners
Richard Dolton
Richard Etherington & Company
Richard Gaby & Co
Richard Harding
Richard Kendall Estate Agent
Richard Poyntz & Company
Richard Stubbs
Richards & Co
Richards Estate Agents
Richardson & Smith
Richardsons
Rickitt Grant
Rise Estate Agents
Robert Aston & Company Ltd
Robert Hale Estates
Robert Wildmore Estate Agents
Robertson Phillips
Robin Cruikshanks
Robinson Sherston
Roderick Wightman
Roger Marsh & Co
Roger N Coupe Estate Agents
Roger W Dean & Co Ltd
Rooke, Wood & Miller
Roscoe Rogers & Knight
Rosiman Estates
Rounce & Evans
Rouse Estate Agents
Roy James Fancy Town & Country Homes
Royal Sun Alliance Property Services
Russell & Co
Russell Cope Estate Agents
Russell Residential
Russell-Collins & Co
Ryder & Dutton
Salvesens
Sanders Oakenfold
Sanderson Taylor Partnership
Sandford & Cooper Estates
Sansome & George (Berkshire) Ltd
Sawyers Estate Agents
Saxton & Co
Schofield Daniel & Hirst Ltd
Select Estates
Seth's Estate Agents
Setter & Lee (Chew Magna)
Setter & Lee (Wrington)
Sheffords
Shepherd Sharpe
Sheppards
Sheridan's
Sherriff Mountford
Sibley Pares & Partners
Silver Service Estate Agents
Simpsons Estate Agents
Sims-Williams
Singer & Singer
Slades Estate Agents
Smart Homes
Solent Estates
Sowerbys
Spencer Kennedy Estate Agents
Spencers (Bridlington)
Spencers (Sheffield)
Spicer Haart
Spread Agency
Stephen Burns & Co
Stephen McIntyre & Co Ltd
Stephen Uren & Co
Stephenson Browne Estate Agents
Stevens Estate Agents
Stirling & Bentley
Stonebridge & Company
Stonegate Estates Ltd
Straker & Co
Sue Brown Independent Estate Agents
Sunderlands
SW Property Centre
Sweeders Estate Agents
T Rabbitt & Company
Tayler & Fletcher
Taylor Riley
Templemans Estate Agents
Thames Valley Properties
Thatchers
The Accommodation Shop
The Brampton Partnership
The Bulman Partnership
The Eric Caines Partnership
The Home Office Estate Agency
The Ian Jones Partnership
The JNP Partnership
The London Mews Company Ltd
The Martin Smith Partnership
The Mather Partnership
The Rayner Property Group
The Reid Partnership
Thimbleby & Shorland
Thomas Morris Estate Agents
Thomas Orr Ltd
Thompson & Partners
Thompsons Residential
Thomson Currie
Thos Wm Gaze & Son
Todd & Hartridge
Tom Clarke & Co
Tom Morgan Estate Agents & Valuers
Tony Newman Estate Agents
Tops Property Services
Town & Country Estate Agents
Tredinnick & Bowes
Trend & Thomas
Tudor
Turner Evans Stevens Ltd
Underwood Payne & Co
Valerie Loveland Estate Agents
Venmore Thomas & Jones
Venmore Thomas & Jones (Prescot) Ltd
Vickery & Co
Villas Abroad
Vivien Hoeder Estate Agents
Volker & Volker
W P J Millers
W R Lee & Co
Waite & Co
Walkers Estate Agents
Ward & Chowen
Warmans
Warwick Baker
Waterfall Durrant & Barclay (West Byfleet)
Waterfall Durrant & Barclay (Woking)
Waterfords
Watts & Sons
Weale & Hitchen
Webbers Property Services (Exmoor)
Webbers Property Services Limited
Webbs Estate Agents
West Cornwall Home Office
Wetherell
White & Eddy
White & Sons
White, Yeates & Ridley
Whitton & Laing
Wicks & Pierce
Wickson & Orr
Wilkie & Evans
Wilkie & Hemming
Wilkins Vardy Residential
Wilkinson Byrne Estate Agents
Williams & Goddwin
Williams Estates
Williams Parry Richards
Willmotts Estate Agents
Wilson Hawkins Plc
Wilsons Estate Agents
Windsors Independent Estate Agents
Winkworth
Woodcock & Son
Woodhall Properties
Woodlands Estate Agents
Woods Estate Agents & Auctioneers
Woolley & Wallis
Wright & Co
Wright & Wright (Nuneaton)
Yates & Company
Young & Manser Ltd
Your Move
Yale Brown & Co

CEASED MEMBERSHIP DURING 2000

Bernard Tomkin & Co
Cousins of Balham Ltd
Crisp Cowley
Daryl Clayton & Co
Duxburys
G E Sworder
Godyes
Jones & Redfearn
Lambert & Foster
Lents Residential
March & Company
May & Son
Peter Rapson
Stapleton & Co
Turrill & Co
Warrens Estate Agents

The Council

CHAIRMAN

THE RT HON GILLIAN SHEPHARD MP

Gillian Shephard became the Member of Parliament for South West Norfolk in 1987. She was a member of the Cabinet in Employment, Agriculture, and Education between 1992-1997. She is now a member of the Council of the University of Oxford and a Director of the Coventry Building Society.

MEMBERS

PETER CONSTABLE

Peter Constable is Chairman of the Ombudsman for Estate Agents Company Limited. A banker by profession, he retired in December 1991 from the position as Chief Executive of Black Horse Agencies Limited.

DIANA WRIGHT

Diana Wright is a freelance journalist specialising in Personal Finance. She has a weekly column in The Sunday Times, dealing with readers' money problems and resolving their disputes with financial institutions.

JANE VASS

Jane Vass is an independent consumer researcher specialising in financial services. She was head of the Financial and Economic Research Group at the Consumers' Association from 1988 to 1993. Her current committee memberships include the Financial Services Authority Consumer Panel.

BRIAN YATES

Brian Yates is a Chartered Engineer and a Director of an Engineering Company in the East Midlands which exports capital equipment. He is Chairman of the Consumers' Association, whose Council he joined in 1986. He is also a member of the Heathrow Airport Consultative Committee and the Professional Conduct Committee of the General Medical Council.

HUGH DUNSMORE-HARDY FRSA FNAEA

Hugh Dunsmore-Hardy is Chief Executive of the National Association of Estate Agents. He is often quoted and called upon by the media to comment on the property market and matters to do with standards and practice by estate agents.

He also represents the NAEA on several industry forums including the Government's Advisory Board on Home Buying and Selling, the Board of the Property Services National Training Organisation (PSNTO) and in 2001 was elected to Chair the Board of the National Approved Letting Scheme (NALS), a self accreditation scheme for lettings and management agents supported by the Department of Transport, Local Government and the Regions.

Until January 2002

RAMINDAR SINGH MBE

Ramindar Singh is a member of the Compliance Board of the Law Society. He retired in September 1998 from the position as Head of Department of Contemporary Studies at Bradford College. He was a Joint Deputy Chairman for the Commission for Racial Equality. He was a member of the National Consumer Council from 1978-1984 and a JP from 1978-1991. He was a member of the Building Societies Ombudsman Council until the end of November 2001 and is a member of the Board of Trustees of Q21 (Bradford). He is a Director of Bradford City Radio Limited.

Foreword

The Council of the Ombudsman for Estate Agents has had an interesting and hard-working year.

The Ombudsman and the dedicated staff at the Salisbury Office continue to improve their performance, and to scrutinise the way their work is done to give the best possible service to the consumers and to Estate Agents. Our quarterly Council meetings are anything but standardised occasions. Debate ranges fast and furious about the best way to improve performance and to give a good service.

The Ombudsman's Report shows that, whereas the overall case load of new work coming in is much the same as last year, the number of cases actually reviewed during the year has risen by 10 per cent - with the result that both the time taken to deal with the case and the backlog have dropped. That is a successful outcome to this year's work.

In his last year's Report, the Ombudsman predicted that we could be on the verge of a major breakthrough in membership of the scheme. It is natural that the Ombudsman - professionally concerned as he is with the operation of the Scheme to as many consumers as possible - should be disappointed that his prediction has not been realised.

Nevertheless, this is a big voluntary scheme. The membership stands at 766 Member Agents, representing 4239 offices. This is impressive by any standards and - while I congratulate the Ombudsman on his support to the OEA Board of the number of initiatives that were taken during the year to widen the Scheme - it is still a pretty good representation. Nevertheless, if we are to include a significant number of those Agents who remain outside the Scheme, as I believe we must, I support the call on the two Professional Bodies – the NAEA and RICS - to make membership of the Scheme mandatory on their Members.

We are looking forward to playing our part in fully co-operating with the OFT in their new approach to Codes of Practice. Any such new Code will include automatic and mandatory access to independent redress. That will give us no problems – as we, as a Scheme – already provide that. I sincerely hope that a much higher proportion of the Estate Agency profession would do the same.

The Scheme's best advertisement is its very existence. Estate Agents should wish to advertise the fact that they are members of it and - by definition - their willingness to submit everything they do to independent scrutiny. During the course of the year for family reasons I have had reason to be involved with a number of Estate Agents' offices. All those we dealt with were members of the Scheme.

Accountability of the Scheme to consumers and Agents is of the utmost importance. It is vital that the public and professionals feel that the Office is accessible but also fair and impartial. The Ombudsman has spared no effort in imparting these principles to the hardworking staff and it is very much the prevailing atmosphere in the Salisbury Office.

I end by saying how sorry we are as a Council to lose the services of Ramindar Singh who has reached the end of his term of office. We were, however, consoled a little by the award of an MBE to him in the New Year's Honours List for services to community relations in Bradford. He leaves us with our gratitude, congratulations and best wishes.

Ombudsman's Report

INTRODUCTION

This is now my third Report as the Ombudsman.

In summary, the year has been marked by:

- A levelling off in membership – despite the offer of free membership during the last six months of the year.
- Greater feedback to the larger Member Agents.

As I wrote last year, my job of Ombudsman has three main elements to it. The first is what I called "cure" and is the most important. It is in allowing consumers the automatic right to independent redress – and dealing with those unresolved complaints that have been made against Member Agents.

The second is what I called "prevention". It is in providing feedback to Member Agents so that they can improve their procedures and their complaints handling processes. In so doing, standards are raised and complaints against them are reduced.

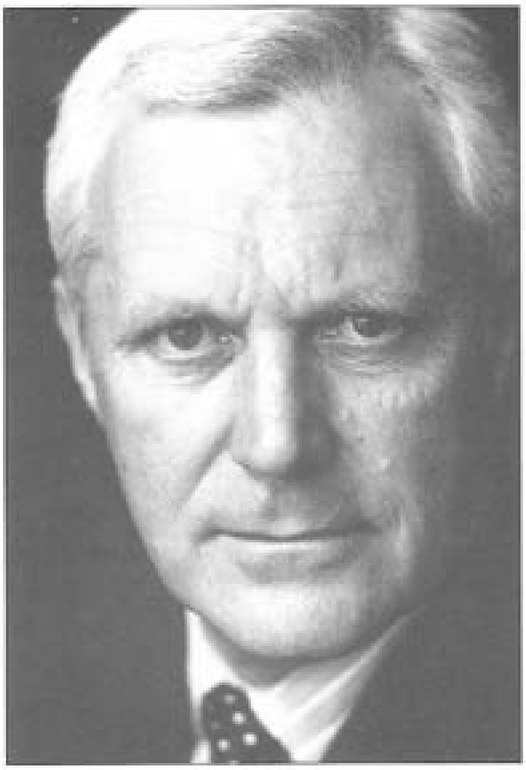
The third is to help explain what the Ombudsman's Office does and how it does it – thus helping to promote the Scheme and recruit new Member Agents.

It is with these three roles in mind that I write this Report.

STATISTICS

The full statistics are given at Annex C to this Report. In short, the story of the year is:

- The overall caseload (520) of new work coming in is much the same as last year (523).
- However, the cases actually reviewed during the year have risen to (550) – up 10% on last year.
- As a result, the time taken to deal with a case has dropped – and with it the backlog.
- It might have dropped further, had it not been for the rise in the number of Appeals against those Case Reviews – to 149, up 15%.



COMPLAINTS HANDLING

The key documents that govern the Scheme are the Consumer Guide and the Code of Practice, both of which are shown on our website, and are available in all the offices of Member Agents. The outline details of the Scheme are given at the front of this Annual Report.

Guidance to Complainants on how the Scheme operates and how they should make their complaints to this Office is given at Annex B.

I believe that my prime task is to seek an outcome that is acceptable to both parties in reaching a settlement of their dispute. It is not just to act as an independent referee making judgements on two sides of a dispute. Therefore, I believe that the aspect of my role as a mediator, a conciliator, or a negotiator, is an important one - and I have tried to put increased emphasis on it over the last year.

Nevertheless, in the great majority of cases, my role will be to make judgements as to whether or not I support the complaints being made, and to award compensation if appropriate.

In so doing, I put the initial onus on Complainants to make a "reasonable" complaint. If they do not, they will not be supported. If they do, then the onus shifts onto the Agent to be able to "prove" his actions accordingly. If – for example – the complaint is that an offer was not passed to the Seller, it is not enough for an Agent to be able to point to his Sales Progress Notes or a Computerised Diary History that contains a reference to a letter being sent. I need to see the letter itself – correctly addressed and dated, and containing the relevant information. If not, I will tend to support the complaint – as the Agent has failed to "prove" the actions taken.

This should not conflict with those Member Agents who have moved to the "paperless office" – as it should still be possible for them to pull off a copy of the customised standard letter, when needed, showing all the relevant details.

In-House Complaints Handling

Best practice – as I saw it – was identified and reported at Annex B to last year's Annual Report. Consequently, I have noted an improvement in the way in which Member Agents have more readily volunteered their membership of the Scheme to Complainants – and invited them to refer their complaints to this Office, should they not be satisfied with the Agent's response.

However, I still have three criticisms. First, there are still too many instances of Agents not addressing all the complaints made. The consequence of so doing is that I will tend to accept the complaints as valid by default – and support them.

Second, too often the internal redress process is observed more in the breach than in the practice; the Managing Director (or equivalent) has not been personally involved in the resolution of the dispute, as he/she should be.

Third, too often (in the case of Member Agents with multiple branches) the internal investigation is carried out by a central complaints handling service dealing at some distance with a Branch and getting a report from the Branch – instead of getting a Local Manager from outside the Branch to carry out an investigation and to produce a written report. Without this, it is hard to convince Complainants that they have had a fair hearing.

Submission of Files

I am pleased to see that an increasing number of Member Agents have taken up my suggestion to submit their Files with a covering letter explaining their side of the case.

Such a covering letter (an outline of which was given in Annex B of last year's Report) goes a long way towards clearly demonstrating what an Agent has done in addressing the complaint.

It does not influence me in my support for their side of the Case; but it does indicate to me the professionalism with which the Agent has gone about the process of trying to resolve the dispute.

COMPLAINTS

At Annex A are some examples of actual cases we have dealt with during this last year.

There are, however, six general points that I want to raise here.

Non-Payment of Commission

I am well aware that this issue is of great concern to all Agents – large and small. I am equally aware that many Sellers believe that withholding payment is "the only weapon in their locker" against an Agent who they believe has treated them poorly.

Although there have been calls upon the Scheme to make it mandatory for all Sellers to have paid their Commission Fee in full before their complaints can be referred to my Office, neither the OEA Board nor the Council has felt able to support such a change. However, whilst I encourage all Sellers to pay the Commission Fee Without Prejudice - and such advice is contained in our Guidance to Complainants – it is not my Office's role to ensure payment of commission.

Financial Evaluation of Buyers

I get many complaints from Sellers concerning the poor financial evaluation of Potential Buyers. Too often, the Agent concerned has not done enough to comply with Paragraph 5c of the OEA Code of Practice – in taking "reasonable steps" to find out the source and availability of funds for buying the property, and to pass that information to the client.

In general, the three most common ways in which funds can be realised are: from the sale of a property; from the granting of a mortgage; or from cash or investments held.

Initially, at the time of the offer being made, the usual (often the only) way in which such information is obtained is from the Buyer himself. Regrettably, it is not unknown for Buyers to be economical with the truth – nor is it unknown for their circumstances or requirements to change.

However, I will accept that the information received in such a way by an Agent is passed on to the Seller in good faith.

Subsequently, this initial information needs following up with further enquiries to report progress. If the Buyer has to sell a property, it will be necessary to liaise with the Estate Agent concerned to check on progress. If a mortgage is required, the Agent should monitor the progress of the mortgage application, any connected mortgage survey, and establish when the mortgage is going to be granted. If the funds are coming from cash or investments held, questions need to be asked as to how long it will take to realise that cash or those investments. The outcome of all such enquiries and monitoring must then be reported to the Seller accordingly. It is then up to the Seller to decide whether or not to proceed.

My attitude towards such a complaint will, therefore, be influenced by the actions of the Agent concerned.

Marketing

Paragraph 5e of the OEA Code of Practice places a duty for Agents to "consult" with their Sellers and "take instructions" as to whether or not a Property should continue to remain on the market after acceptance of an offer. I have seen cases where this has been ignored, or the Agent has written to the Seller along the lines of "unless we hear to the contrary, we will have taken the property off the market". In neither case does this comply with the Code.

Dual Fee liability

The obligations for an Agent to warn a Seller about any liability to pay two commissions are clearly laid down in the Code (Paragraph 2). Problems exist when one Agent is disinstructed after introducing a number of viewers, and another Agent is instructed. I expect the "old" Agent to give the necessary warning as laid down in Paragraph 2c; and the "new" Agent to give the necessary warning as laid down in Paragraph 2e. Furthermore, in the case of Member Agents, I will expect (should these warnings not have been given) for them to negotiate and share the fee.

Failure to Return Telephone Calls

This is the most common complaint that I receive, and it features – to a greater or lesser extent – in most complaints. Basic office procedures should ensure that telephone calls are returned, and promised calls are made.

In many cases that cross my desk, it is clear that an Agent's failure to observe this simple courtesy has led to a deterioration in the relationship with their client – and inevitably leads to exasperation, resulting in a number of other complaints.

Goodwill Offers

In many cases of complaint, Agents make an offer – either in genuine compensation for failures in service provided, or as a gesture of goodwill in seeking a settlement of the dispute. When these complaints are referred to my Office, these offers lapse and may or may not be re-instated. In effect, this means that if a Complainant rejects an offer made by a Member Agent and refers his complaint to this Office for independent review, he gives up any automatic right to that offer.

I have taken steps to make this clearer to all Complainants, before they take the decision to refer their complaints to my Office - and, therefore, before any offer has lapsed.

COMMUNICATIONS & FEEDBACK

Newsletters

Over the last couple of years I have produced Ombudsman's Notes every 3-4 months on the OEA website. These have recently been re-titled Quarterly Newsletters – and are a combination of news from the OEA Board and from my Office. All four editions appear on the website, but two of them – the Winter and Spring editions – are also in hard copy, and are sent out to all Member Agents with the annual invoice (Dec/Jan) and with the Annual Report (Mar/Apr).

Feedback to Members

Last year (2000) I had two Feedback Workshops to identify best practice – as I saw it – in the field of complaints handling. The outcome was reported at Annex B to last year's Report under the three headings of: OEA Guidelines on In-house Complaints Handling; OEA Guidelines on the Submission by Member Agents of Documentation to the OEA Office; and Complaints Handling by the OEA – Lessons Learned.

Building on that – and for the first time this last year (2001) - I held a series of meetings with each of the larger Member Agents at the Salisbury Office with their Complaints Handling Teams. The aim was to discuss with them individually how they measured up to best practice.

It was of mutual benefit to both parties – and I intend to make this an annual feature. The programme for 2002 has already been set.

However, although I had a number of ad hoc meetings with several smaller Member Agents on an individual basis, I am conscious that more could be done. Consequently, I propose to hold a series of Regional Seminars around the country, primarily for the medium and smaller Member Agents. This proposal was explained further in the Winter Newsletter of January 2002 – in which I sought Member Agents' views as to whether to proceed. If sufficient support for the proposal is received, I expect to hold a number of Regional Seminars during 2002.

DEVELOPMENTS IN THE SCHEME

Membership

In my last Report, I wrote:

"If the increase in membership in 2001 resembles that of this last year, we could be on the point of a major breakthrough. We could achieve what I call the "critical mass" which could see most others then come and join. In that way, the profession will get the credit for bringing this situation about themselves – instead of having it imposed upon them – and go a long way in enhancing its reputation in the eyes of the Consumer."

Regrettably, the impressive increase in membership of 53% seen in 2000 has not been matched this year. At the beginning of the year 2001, membership stood at 682 Member Agents, with 4,221 offices. This represented 35% of the potential 12,000 residential estate agency offices throughout the country. (Incidentally, if anyone can produce evidence that this figure of 12,000 is wrong, we would be most grateful.) As at the end of year 2001, membership stood at 769 Member Agents, with 4,239 offices. The reason for the mismatch (when you consider the outcome of the Free Offer below) is explained by the fact that a number of larger Member Agents shed some offices during the year.

Increase in Membership

I, therefore, regard the return for the number of initiatives taken to widen the Scheme over the last year - and for the efforts of many people who have given unstinting help to promote the Scheme at venues all over the country – as pretty disappointing.

Chief amongst this year's initiatives was the Free Offer. This was launched by the OEA Board in June – with the help of a suitable quote from the Consumer Affairs Minister – and gave any new Member Agent free membership of the Scheme from 1 July for the rest of the year. The response was "underwhelming". Only 92 Member Agents, with 221 offices, joined up in the last six months of the year.

The Way Ahead

It will clearly be difficult to persuade a large number of new Agents to join the Scheme voluntarily. Nevertheless, it can rightly be argued that - with 4,239 offices throughout the country - the Scheme is a well-established and major force in Estate Agency; and that the house buying and selling public has plenty of choice in seeking out an agent in the High Street who is a member of the Scheme.

However, we believe that adding a significant majority of all Estate Agency offices can only come about in two ways: either mandatory membership - through the Professional Bodies (the preferred option); or Statutory intervention by the Government. The Chairman of the OEA Board has called upon the NAEA and RICS to make membership mandatory on their members. I strongly support such action.

OFT's Approach to Codes of Practice

What might help reluctant Agents to join is the DTI's plan to isolate "rogue traders" and to identify "better traders". At present, the OEA, NAEA and RICS all subscribe to a common Code of Practice. A significant part of the DTI's plans involves the OFT's new approach to Codes of Practice.

The idea is that willing trading sectors should have a Code of Practice that incorporates certain core criteria requirements and then submit it for OFT's approval and endorsement. One of these criteria is automatic access to independent redress (eg an Ombudsman Scheme). If such Codes are then approved by the OFT, the sector will be allowed to display a nationally recognised OFT logo as a mark of "better traders".

The OEA Board has already submitted its application to the OFT to participate in the new approach – and is supported by the NAEA and RICS. However, unless the NAEA and RICS can sign up to the new Code with the new core criteria – specifically the automatic access to independent redress – more than one Code for the industry will then exist. Furthermore, their members who are not Member Agents of the OEA Scheme will not be eligible to display the OFT logo identifying them as "better traders" to the general public.

Under the OFT's old regime for Codes of Practice, the Director General of Fair Trading gave his support to a number of consumer codes, including the OEA. In paving the way for the new regime, this support ceased on 31 December 2001. This was not because the OFT had made a judgement about individual codes, but because they felt it important to establish a clear distinction between the old and the new regimes. Therefore, as of that date, all OEA Codes had to display a warning sticker accordingly:

"The Office of Fair Trading is introducing a new approach to Codes of Practice, and is ending its current system of specific support for Codes as from 31st December 2001. This Foreword from the Director General of Fair Trading will therefore be invalid from that date. The aim of these changes is to provide a higher and more consistent level of consumer protection.

In September 2001 the Ombudsman for Estate Agents applied to the Office of Fair Trading to participate in this new approach."

Trading Standards

The Partnership Memorandum with LACOTS (Local Authorities Co-ordinating Body on Food and Trading Standards) which I signed in November 1999 meant that - from 1 January 2000 - it was to be LACOTS' policy for all local Trading Standards Departments (TSDs) which receive a complaint against an Estate Agent to consult my Office in deciding how best to proceed. If the complaint is against an OEA member, the likelihood is that my Office will deal with it, and not Trading Standards.

This last year I dealt with a number of such cases - in which local TSDs have been informed about a complaint against an Estate Agent, and they have been content for me to deal with the matter. We expect such instances to increase. The message is taking time to spread to all TSDs – but we have had recent discussions with LACOTS on measures we can both take to disseminate the message more effectively. The advice to all Member Agents – who receive a call from their local TSD following up a complaint – is to remind the TSD of the arrangement, and to try and get to them to contact the OEA Office as early in the process as possible. Failing that, Member Agents can contact the OEA Office direct.

Letting & Property Management

The Working Group set up by the OEA Board recommended that no definitive decision be taken in regards to bringing the practice of lettings and property management within the scope of the current Ombudsman Scheme.

Instead, the Board will monitor two other industry initiatives. One is the Tenancy Deposit Scheme which incorporates a redress mechanism between private landlords and tenants involving the Independent Housing Ombudsman. The trial is likely to be extended on a national basis and will deal with the matters relating to tenants' deposits and the apportionment of charges covering dilapidations.

The second is the National Approved Letting Scheme initiative which provides assured minimum service levels for Landlords and Tenants. The Scheme, which incorporates a redress mechanism, has been provided with Government funding to enable it eventually to become an industry wide policy.

The Board will continue to monitor these initiatives and keep under review any extension of the Ombudsman's role in support of both of these current Schemes.

Easier Buying & Selling

Although legislation promoting the concept of a "Seller's Pack" was introduced into Parliament since the last Report, the 2001 general election interrupted the passage of this legislation.

The Government has confirmed that the introduction of the Seller's Pack - including a Home Condition Report - continues to be an important strand in Government policy, and legislation is likely to be introduced during the Parliamentary session starting in November 2002.

In the meantime, work is continuing in a number of areas finalising the shape of the Home Condition Report - and also examining some of the more controversial issues which have caused consternation amongst some Agents. However, it is expected that, along with other initiatives - including electronic conveyancing and the development of the National Land Information Service - changes to the home buying and selling process are unlikely to be implemented until 2005 at the earliest.

CONCLUSION

Our aim at the Salisbury Office is to deliver a prompt, user-friendly service – which produces consistent, fair and reasonable judgements. We hope to communicate the way in which we approach our Reviews through reasoned decisions and regular feedback to Member Agents. In so doing, we hope to identify and spread best practice.

I would like to pay tribute to the Chairmen and all Members of both the OEA Council and the OEA Board – I could not have received better support and encouragement from them.

I would also like to publicly recognise the sterling efforts of my colleagues at the Salisbury Office.

They truly are the engine room of the Scheme.

Finally, my message to the general buying and selling public is to actively seek out and choose an Estate Agent who is a member of the Scheme. And my plea to Members - as ever - is for them to actively promote the advantages of the Scheme and to market their membership of it as widely as possible – and at every opportunity. As ever, the aim must be to make non-members question the commercial wisdom of staying outside the Scheme.

Case Examples

Case 1 - Keys

Mr and Mrs A (Buyers) completed the purchase of their new house. As they would be arriving at the property after office hours, they arranged with the Agent that they would collect the keys from a local hotel. On arrival at the hotel at 10 pm on a February night with their young children, Mr and Mrs A spent several hours unsuccessfully trying to find the keys. They then unpacked as many of their belongings as possible in the back garden of the house (including the beds) and returned home at 3 am. The next morning, they loaded up the van and eventually found out that the Agent had delivered the keys to the wrong hotel. They had to make an additional unplanned trip to complete the removal of their belongings, as they had been unable to fully unload on the first night.

Although the Agent admitted his error, he rejected the claim for compensation.

As the Agent had agreed to the arrangements about the keys, I considered that the Agent was entirely responsible for the additional costs that Mr and Mrs A incurred, as well as for the stress and inconvenience caused. I also expressed my surprise that the Agent had not made any offer of compensation. I made an award of £350.

Case 2 – Negotiation

Mr and Mrs B (Sellers) made several complaints about the performance of the Agent selling their house. The Agent had already reduced his Commission Fee by £400, but his reduced fee of £1,250 (plus VAT) had not been paid. Due to Mr B's severe illness, Mrs B had found making payment difficult. I upheld some of these complaints.

My Office acted as an intermediary and negotiated with the Agent and Mrs B a settlement at £500 – with the reduced Commission Fee being paid in monthly instalments. I should point out that payment of such a settlement – even though negotiated by this Office – was between the two parties concerned; the payment did not involve this Office in any way.

Case 3 - Commission Fee

Mr C (Seller) was presented with a Commission Invoice, showing a rate of 1.5%, by the Agent selling his house, whereas he believed it should only have been 1%. He duly paid at the 1% rate.

His case was that he believed that he had a verbal agreement at 1%; all other agents he had approached quoted 1%; at no time was 1.5% mentioned; and he had never seen an Agency Agreement, let alone signed one. The Agent's case was that the fee of 1.5% was verbally agreed at the market appraisal meeting; and that an Agency Agreement to that affect was sent to Mr C under a covering letter. Mr C maintained that he did not receive the letter.

A copy of the Agency Agreement and the covering letter were on the Agent's file. In that covering letter, Mr C was asked to do two vital things: to sign the Agreement and to return a copy; and to approve the Sales Particulars and return a copy. To facilitate this, the Agent included a pre-paid and addressed envelope. It is clear that Mr C did not return that envelope and the Agent did not chase up either of these issues. Had he done so, it would have been abundantly clear whether or not the letter had arrived, and appropriate action could have been taken.

I was unable to conclude with reasonable certainty that Mr C had been made aware of the Agent's terms and conditions before he became committed to the sale. I, therefore, upheld his position to pay at the 1% rate.

Case 4 – Consultation with Co-owners

Mr D (potential Seller) complained that he had not been consulted when his ex-partner (Mrs X) sold their house. The crux of the matter was that – in August 2000 – Mrs X wanted to sell the shared house, but Mr D was reluctant to do so because of his cat. Consequently, they signed what became known as the "Cat Agreement" on 26 August, whereby the house would only be sold following the cat's death, unless a year had gone by since the signing of the Agreement.

A year later – after warning Mr D of her intentions – Mrs X instructed the Agent to market the Property. The Agent wrote to both co-owners explaining their terms of business – and asking them to each sign that they understood the terms of the Agency Agreement. Mrs X did so, but Mr D did not. The Agent went ahead with marketing.

Mr D eventually went on to buy the Property, but complained to the Agent – and then to this Office – that the Agent had acted improperly in putting the house on the market in the first place.

I did not agree. The "Cat Agreement" made it clear that Mr D was in no position to object to the sale after August 2001 – that was the whole point of the Agreement. Furthermore, the Agent acted entirely properly by sending a copy of his Terms of Business to both co-owners. It was not, therefore, unreasonable for the Agent to have marketed the house under instructions from Mrs X – despite some verbal objections from Mr D – until such time as it was agreed that Mr D would buy out Mrs X. At that point, the Agent ceased marketing.

I did not support the complaint.

Case 5 – Sales Particulars

Mr E (potential Buyer) put in an acceptable offer to buy the Property – a 200 year old terraced, listed property. During his structural survey, his surveyor was unable to gain access to the attic space, as the access hatch was screwed shut and covered with Artex. The Sellers refused to allow the hatch to be opened, so Mr E withdrew from the sale. He believed that the Agent was (or should have been) aware of the attic hatch situation and was, therefore, responsible for the collapse of the sale. He complained that the Agent had given him false and misleading information.

The Sales Particulars made no reference to loft access or attic space. This did not surprise me, as such detailed items are not normally included in Sales Particulars and there was, apparently, nothing to put the Agent on notice of their existence.

I did not believe that omission of such detail – no matter how important it subsequently became – meant that the Agent failed to provide an accurate description of the Property. The Sellers did not disclose this information to the Agent when putting their Property on the market. Similarly, I did not consider it reasonable for an Agent to discover such a feature during a preliminary visit to the Property – particularly as their Seller clients clearly wanted its existence kept quiet.

I did not support the complaint.

Case 6 – Access

Miss F (potential Buyer) arranged to view the Property in Cornwall. On arrival at the Property from Kent, the Agent was unable to gain entry; the front door lock was corroded, and the back door lock had been damaged in an attempted break-in. Despite attempts by the Agent to gain entry – including asking the Seller if they could instruct a locksmith – they failed. Miss F believed that the Agent should have known about the state of the locks, and looked to the Agent to compensate her for the fruitless journey from Kent to Cornwall.

I had great sympathy for Miss F, but concluded that the problems encountered were unforeseeable. The Agent was not employed to manage the Property, only to sell it. The last viewing had taken place some two weeks earlier, and no problems with entry were encountered. Nor was the Agent to blame for the fact that the Seller did not want to incur the costs of a locksmith that same day.

I did not support the complaint.

Case 7 – Negotiation

Mrs G (potential Buyer) raised a number of complaints – including failure to show due diligence in preparing Sales Particulars, and applying undue pressure to exchange contracts. The Agent – whilst admitting some but not all of the complaints - had made several offers to settle the matter (the last at £5,000) but Mrs G had been considering court proceedings. Both parties then asked this Office to look at the case.

Having carried out a preliminary review, I concluded that £5,000 represented a very generous offer to settle the matter. Using my position as an intermediary, both parties eventually agreed to settle at the offer of £5,000.

Case 8 – Collusion

Mr H (Seller) had his flat valued at £175,000 – with a view to achieving £167,000 - by the Agent. He received an offer of £155,000 from Buyer 1. There were other viewings – but he received no feedback from them, nor was there any record on the Agent's file. After contracts had gone out, Buyer 1 requested a reduction of £5,000 in the sale price. Mr H rejected this and told the Agent's Negotiator to take the flat off the market. The Negotiator persuaded Mr H to give it more time; the next day he said that there was a family cash buyer (Buyer 2) who wanted to view. Buyer 2 subsequently made an offer of £150,500 – which the Negotiator advised Mr H to accept, blaming a depressed housing market. Mr H accepted the offer – but, when he went to his solicitors to sign the contract, he noticed that the flat was being bought by an Investment Company.

It subsequently transpired that Buyers 1 and 2 both had an interest in the Investment Company, and that the Negotiator knew that Buyer 2 was Buyer 1's boss.

I concluded that there was sufficient evidence to persuade me that that there was less than straightforward dealing by the Negotiator. Whilst there was no evidence that the Company knew of the Negotiator's part in this matter – Member Agents are responsible for the actions of their staff.

I could not conclude, however, that the Negotiator's actions were responsible for the loss of the full £16,500 claimed by Mr H.

I made an award of £5,000.

Case 9 – Poor Record-Keeping

Mrs J complained that the Agent had not actively marketed her Property, that a member of staff had entered the Property without forewarning her or knocking, and that the Agent had claimed a higher commission rate than he was entitled to.

The Agent adduced no evidence in defence of the first two complaints – and I, therefore, accepted Mrs J's version of events. On the third complaint, the Agent was wrong in attempting to claim a multi-agency fee when this had not been stipulated in the Agreement.

I supported all the complaints and made an award of £500.

Case 10 – Poor Service

Although the Agent sold Mrs K's house, she felt that their service had been poor. The Sales Particulars were brief to the point of being of little help, and she complained that – after introducing the Buyer - communications from the Agent had been almost non-existent, as had any help she requested.

I upheld the Agent's contractual entitlement to his commission, but supported all the complaints made. It is not enough for an Agent to merely find a Buyer who makes an acceptable offer. Although the prime responsibility for matters concerning exchange and completion fall to the Solicitors, the Agent still has a vital role to play. It is to monitor progress; to assist where appropriate, as asked; and to report information deemed helpful to bringing the transaction to fruition. In this case, the Agent did not fulfil this responsibility.

I made an award of £750.

Case 11 - Good Record Keeping

Delays occurred during the sale of the Property, as a result of the Buyer's survey. Mr L (Seller) complained about the lack of monitoring and contact by the Agent, and the lack of marketing in the latter stages of the sale. He declined to pay the Commission Invoice. The allegations were very general.

By inspecting the records of the Agent, it was clear that Mr L's allegations could easily be refuted. The comprehensive Branch records showed clear evidence of the Agent's monitoring activity, and the reporting of that monitoring to the Seller Client. They also showed that the Agent had written to Mr L to confirm that he had agreed to take the Property off the market after he had accepted the Buyer's offer.

I did not support the complaints.

Case 12 – Withholding Keys

Mrs M (Seller) made several complaints against her Agent, and requested a reduction in his Commission Fee as a result of the poor service she felt she had received. Mrs M then alleged that the Agent threatened court action and to withhold the keys from the Buyers on Completion unless their Commission Fee was paid.

Although I supported some of the other complaints (and made an award of £300) there was a conflict of evidence concerning the alleged threats. Mrs M's husband rang this Office the day before Completion to say that he had telephoned the Agent to be told that they would not hand over the keys unless the Commission Fee was paid first. This Office advised him of his right to pay Without Prejudice and to take up the complaints later. This Office also spoke to the HQ of the Agent concerned to explain the situation. The Agent denied the allegation, maintaining that – as they had been told by Mrs H that she no longer wanted them to act for her – they had asked her what she wanted doing with the keys. This, they maintain, was taken out of context and misconstrued as a threat – which they categorically denied. As it turned out, the Commission Fee was paid in full Without Prejudice, and the keys were released.

Whilst I have always recognised an Agent's right to pursue the recovery of fees to which the Agent is contractually entitled, such efforts should be legitimate. I do not regard the threat of withholding keys at Completion to be legitimate. It was as well, therefore, that such alleged threats were not carried out.

OEA COMPLAINTS FORM

1. You should have received a Final Response from the Estate Agent before sending this to the OEA.
2. Please complete this Complaints Form clearly in Black or Blue Ink – or Type.
3. You can down-load this Complaints Form from our Website on www.oea.co.uk

PART 1	My General Details Are:
• Name of Complainant: • Address: (for correspondence) • Telephone Number:	

I am complaining as: (Circle as Appropriate) A successful Seller:- (ie Completion achieved) YES/NO A potential Seller:- (ie Completion NOT achieved) YES/NO	A successful Buyer:- (ie Completion achieved) YES/NO A potential Buyer:- (ie Completion NOT achieved) YES/NO

PART 2	The Estate Agent and Property Concerned Are:
• Name and address of Estate Agent • Address of Property concerned:	

PART 3 My Specific Complaints Against the Estate Agent Are:
Please use a single sentence to specify each separate type of complaint. **For Example:** ◦ The Agent failed to follow my instructions regarding .... ◦ The Agent promised to .... and failed to do so. ◦ The Agent .... without reference to me. ◦ The Agent acted unfairly towards me by .... ◦ The level of service with regard to.......................... was unsatisfactory. NB. **1. The Ombudsman can only deal with specific complaints that you have already put to the Agent.** **2. The details and supporting evidence come in Parts 4 & 5.** **3. Please use a separate page if necessary.**

PART 4	The Outline Case History is as Follows:
Please give a brief summary of the relevant key events - with dates – of the transaction or dispute with the Agent. If you are a Seller: (or Potential Seller) you may wish to include all or some of the following - as applicable: • Valuation Process. • Agency Agreement. • Sales Particulars. • Marketing of Property. • For Sale Boards. • Offers - rejected/accepted. • Problems of transaction. • Communications with Agent. • Exchange & Completion. • Receipt of Commission invoice. • Paid or not Paid. • Problems - Complaint Process. • Goodwill Offer made. • If so – why rejected. • Exhausted Complaints Process (their final letter is attached). **If you are a Buyer :** (or Potential Buyer) you may wish to include all or some of the following as applicable: • Offer made – accepted. • Offers satisfactorily handled. • Survey. • Mortgage and Lender. • Problems of transaction. • Communications with Agent. • Exchange & Completion. • Problems - Complaint Process. • Goodwill Offer made. • If so – why rejected. • Exhausted Complaints Process (their final letter is attached).	This is your chance to tell your side of how the transaction went – and is the context in which you have made your complaint. Please be as specific with details as you can (eg dates, times, names). **If you would prefer to type or write this on a separate page – please do so.**

PART 5	I am Providing the Following Supporting Evidence:
Please attach all correspondence between yourself and the Estate Agent that you consider relevant. • Please see attached correspondence. • I attach a covering letter. YES/NO	

PART 6	I WOULD LIKE THE ESTATE AGENT TO:
Please specify what you think the Estate Agent should do to put right the wrong you consider has been inflicted on you.	

Signed: .... Date: ....

Guidance for Complainants

Submitting a Case to the Office of the Ombudsman for Estate Agents

General

In submitting your Case for formal review by this Office, it is a pre-requisite that your Case has already been through the In-House Complaints Procedure of the relevant Estate Agency. It comes to this Office for an independent and impartial Review having been unresolved by yourself and the Estate Agent. We provide an Alternative Dispute Resolution service – the other option being the Courts.

When a Case Officer is assigned to your Case, all he/she knows about your Case is whatever is contained in the Case File. It is in your best interests, therefore, to prepare your Case as carefully as you can, and to present it as clearly as you can in order to speed up the review process.

The purpose of this Guide is to assist you in that process.

Ombudsman's Yardsticks

In carrying out his Review, we are guided largely by the following:

- Whether or not there has been a breach of the Code of Practice.
- To what extent does your complaint match up to – or fall short of - the basic principles which govern the transfer of ownership of residential property:

1. An Estate Agent's primary responsibility remains at all times to his Vendor Client (the Seller), while retaining a duty of care and fair treatment to all prospective Buyers.
2. The Estate Agent holds a legal obligation to forward all offers received for a property to his Vendor Client, unless these are of an amount or type which the latter has specifically instructed the Estate Agent, in writing, not to accept.
3. Following acceptance of an offer Subject to Contract, either party (ie the Seller or Buyer) can renegotiate either the price or any conditions of the agreed sale, or indeed withdraw without penalty - until such time as Exchange of Contracts has taken place.
4. It is always the Seller's decision, and not that of the Estate Agent involved, to whom and at what price a property should be sold.

Guidance

Typed Submission. Please ensure that, whenever possible, you submit your Case in typewritten form.

Specification of Complaints. Please be specific in your complaints. If you have three general complaints (eg lack of communication, keys, For Sale boards) make sure you make that clear, giving details in each case. Where you can do so, it is always helpful if you can refer to the specific paragraph in the Code of Practice that you feel has been breached. A copy of the Code of Practice is enclosed.

Case History. Where you can, it will help if you can give a brief chronological outline of the major events of your Case. Details regarding dates, names and events will all help us in appreciating what happened from your point of view.

Evidence. Where you can, please submit all the evidence that you can that will support your Case. This will include, amongst others, all the correspondence you have had in your dealings with the Estate Agent, and details of any third parties who might be able to clarify any points raised by this Office during the review process (such as details of any third party who is prepared to provide information that could assist your Case). Remember, if you make a complaint or an allegation against the Estate Agent, your Case is greatly enhanced if you can support it with some form of Evidence. Similarly, if you make a complaint or an allegation, and you cannot support it – and the Estate Agent is able to produce a rebuttal – your Case is that much weaker.

Awards

Awards of compensation under the Ombudsman for Estate Agents (OEA) Scheme are only made where the Ombudsman is satisfied that proven actual financial loss and/or otherwise avoidable expenditure has been incurred, or avoidable inconvenience and/or stress (beyond that inherent in the buying and selling of houses) has been occasioned, which can be directly attributed to any aspect of the performance of a Estate Agent.

The size of commission and/or other charges due has no bearing on the amount of compensation awarded. In assessing the amount of compensation, any contributory liability that can properly be attributed to complainants themselves, or to any third parties, is further taken into account.

Non-Payment of Commission by Seller

It should be noted that the contract a Seller enters into with an Estate Agent is not a Service Level Agreement whereby the fee will be abated by failures in the level of service delivered. It is a binding contract whereby the Seller agrees to pay the Agent a commission fee if the Agent introduces a Buyer who goes on to Exchange Contracts and Complete on the transaction of buying their Property.

Ideally, an Agent wants all his Seller clients to pay their Commission in "Full and Final" settlement. Failing that - to be paid "Without Prejudice". Failing that – to be paid that part of the Commission which is not in dispute.

An Estate Agent is at liberty to seek recovery of contractually entitled Commission Fees through the Courts. An Estate Agent will make a commercial decision whether to choose this option; some will hold off until the Case has been reviewed by this Office.

Accordingly, we do encourage Complainants to pay the Commission Invoice "Without Prejudice" and allow this Office to review the complaints and come up with a judgement.

However, we can still carry out a review of the other aspects of a complaint – even if Court action has been instigated to recover the Commission Fee.

The best way to ensure that Court action does not take place is for Complainants to pay the Commission Invoice "Without Prejudice".

Furthermore, you should be aware that we take note of the advantage to Sellers who do not pay their Account on time – and this is reflected in any Award they may receive.

This guide is to assist you in preparing and submitting the best case you can.

Please use it to help us to help you.

Thank you.

How will we deal with your complaint?

About the Scheme

The OEA Scheme provides an independent service for dealing with disputes between Estate Agents who are members of the Ombudsman Scheme, and consumers who are actual or potential buyers or sellers of residential property in the UK.

The Ombudsman is independent of the Member Agencies – and will provide a free, fair and impartial review of complaints in order to reach a resolution of the dispute.

Can we actually deal with YOUR complaint?

We will ask you two main questions.

- Is your complaint against an Estate Agent who is a member of the OEA Scheme? If not, we cannot deal with it. We will do what we can to point you in the right direction of someone who may be able to help you.
- Have you been through the in-house complaints handling procedure of the Member Agent concerned? If not, we cannot start to investigate your complaints until you and the Member Agent have had a proper chance to try and resolve the problem yourselves.

If we believe that we CAN deal with your complaint

We will send you a Complaints Form and some Guidance Notes that will help you frame your complaint. There is also a Form in which you consent to allow this Office to gather information about the buying/selling transaction you have been involved with. This allows us to get the Files of the transaction from the Estate Agent and use that information in our investigation of your complaints.

When we receive your Complaints Form - and the File from the Estate Agent – these, together, will then become a Case. This will then be given to a Case Officer to undertake a Review of your complaints.

Mediation and Conciliation

We will always consider – and actively promote and support – any opportunities for a mediated settlement with the Estate Agent you have complained about.

If the Agent has made you a goodwill offer by way of settlement – which you have rejected - we will consider whether or not that offer does or does not represent appropriate compensation for your complaint.

An Offer from the Estate Agent

Please note that if the Estate Agent has already made you any form of financial offer by way of settling your dispute – be it of compensation or goodwill – that offer lapses on referral of your complaints to this Office. It may or may not be reinstated. The Ombudsman will come to an independent judgement on the issue.

If the Ombudsman DOES support your complaint

If the Decision is to support all or part of your complaint and recommend an award of compensation in your favour, the Case Review containing that Decision is first sent to the Estate Agent – who has 14 days to accept the decision or make an Appeal. If the Agent appeals, this is considered and the Case Review may be amended as necessary.

The Case Review is then sent to you – and you have 28 days in which to accept the decision, or make your own Appeal.

If the Ombudsman does NOT support your complaint

If the Decision is that we do not support your complaint - and do not recommend an award of compensation to you - the Case Review containing that Decision will be sent to you first.

What if you do NOT agree with the Ombudsman's Decision? Can you appeal?

Yes, you can appeal, but we will only re-consider the Decision in exceptional circumstances. Such circumstances include:

- Where you can show that there was a significant error in fact that would have had a material affect on the Decision.
- Or where you can produce significant new evidence that will have a material affect on the Decision.

If you are unable to show us that there are exceptional circumstances, we will not be able to help you further.

Awards

If we make an award of compensation in your favour, it is binding on the Estate Agent.

If you accept an award of compensation, please note that you do so in Full and Final settlement of your complaint against the Estate Agent.

What if you STILL do not accept the Ombudsman's Decision?

That is your right. But there is nowhere else within the OEA Scheme for a second look at your complaint.

However, you are perfectly free to pursue your complaint elsewhere, Without Prejudice from anything we have written. Please note that the Estate Agent will also be free to pursue any claim he may have against you for any outstanding commission fees.

By your rejection of the Decision, you also give up your right to any award that we may have made to you.

Your Assurance

You can be sure that any complaint reaching this Office will be investigated thoroughly and fairly – and the decision based entirely on the merits of the case.

Annual Workload Summary

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Complaints about performance of all Estate Agents	1236	1804	2340	2566	2483	2705	3039	3541	3889	4466	5730
Those concerning Member Agencies within TOR	517	701	965	992	802	881	966	1174	1516	1896	1969
Case Closed	62	136	198	222	229	266	286	291	316	482	551
Findings											
For Member Agencies	25	53	106	118	115	146	130	140	161	169	189
For Complainants (1)	34	78	87	97	110	116	152	150	152	297	358
Outside Terms of Reference	3	5	5	7	4	4	4	1	3	16	4
Awards											
£0-99	7	8	13	18	20	24	18	27	20	23	39
£100-499	27	47	44	52	64	61	107	89	104	240	264
£500-999	7	22	19	20	15	21	15	20	19	25	37
£1000-2999	4	11	8	6	8	9	11	13	9	7	15
Over £3000	1	4	3	1	3	1	1	1	0	2	3

(1) Includes cases where the Ombudsman endorsed as having been reasonable offers already made by Member Agencies, or in a few instance, negotiated a slightly higher settlement.

General Statistics

			2000	2001	% Increase
			1 Jan - 31 December		
1	**INITIAL ENQUIRIES RECEIVED**				
	a. General				
	From Estate Agents		201	251	
	From the Media		82	44	
	From the Public		498	618	
		Sub Total 1	**781**	**913**	**16.90**
	b. Complaints against non Member Agents		2161	2878	
		Sub Total 2	**2161**	**2878**	**33.18**
	c. Complaints against Member Agents Outside Terms of Reference (Mainly lettings)		409	678	
		Sub Total 3	**409**	**678**	**65.77**
	d. Complaints against Member Agents within Terms of Reference				
	From Complainant who is a Seller		1056	1109	
	From Complainant who is a Buyer		598	671	
	From Complainant who is a Seller & Buyer		44	74	
	Insufficient information given (mainly in letters)		198	152	
		Sub Total 4	**1896**	**2006**	**5.80**
	Complaints against all Agents =	**Sub Totals 2 - 4**	**4466**	**5562**	**24.54**
	TOTAL ALL ENQUIRIES =	**Sub Totals 1 - 4**	**5247**	**6475**	**23.40**
2	**NEW CASES FOR REVIEW**	**(1) = Workload**	**523**	**520**	**-0.57**
3	**CASES REVIEWED**	**(2) = Productivity**	**501**	**550**	**9.78**
4	**APPEALS**	**(3) = Productivity**	**127**	**149**	**17.32**
5	**CASE REVIEWS & APPEALS**	**(4) = Productivity**	**564.5**	**650.5**	**15.23**
6	**CASES CLOSED**	**(2) = Outcome**			
	Findings				
	Against Complainants		169	189	
	Against Member Agents		159	202	
	Negotiated Solutions	(5)	138	156	
	Outside Terms of Reference		16	4	
		Sub Total	**482**	**551**	**14.32**
	Description of Complainant				
	Seller		352	416	
	Buyer		113	105	
	Seller & Buyer		17	30	
		Sub Total	**482**	**551**	**14.32**
	Size of Awards				
	£ 0-99		23	39	
	£ 100-499		240	264	
	£ 500-999		25	37	
	£ 1000-2999		7	15	
	£ Over 3000		2	3	
		Sub Total	**297**	**358**	

1 This represents the Workload for the year - started by the Waivers Issued to start a new Case.
2 The number of Cases Closed will always differ slightly from the number of Cases Reviewed.
3 Those Cases where either the Complainant or the Member Agent has commented on the Finding.
4 Each Appeal takes about 50% of a Case Review in time taken to complete.
5 Cases where the Ombudsman endorsed, increased or lowered offers already made by MAs.

Web Site Hits: For whole of 2000 - 17,165. For 1 Jan - 31 Dec 2001 - 19,941

Highest Awards: To date (1994) - £13,100. In 2000 - £3,750. In 2001 - £5,000

Nature of Complaints within Terms of Reference

Initial Enquiries

	2000	2001
Maladministration	961	1089
Commission/Fees	474	529
Sales Particulars	169	313
Communication of Offers-Buyer	254	240
Communication of Offers-Seller	118	148
Buyers Finances	101	139
Viewings	120	138
Initial Valuation for Sale	108	100
Conflict of Interests	22	75
Keys	27	71
Sale Boards	42	61
Unfair Bias Towards Other Party	38	52
Offer of Services	5	33
Sealed Bids	0	0
Discrimination (wef 1/7/99)		
Racial	0	5
Gender	0	2
Disability	0	1

Cases Formally Reviewed

	2000	2001
Maladministration	412	474
Commission/Fees	262	307
Sales Particulars	83	106
Buyers Finances	49	78
Communication of Offers-Seller	73	58
Communication of Offers-Buyer	62	56
Viewing	61	47
Sale Boards	26	46
Initial Valuation	67	42
Unfair Bias Towards Other Party	14	29
Keys	34	28
Conflict of Interests	12	20

N.B.

1. Where it has been possible to identify more than one main element within an individual complaint, all have been included in the statistics above.

2. Figures are shown for 2001 in descending order.