



Ombudsman for Estate Agents

Annual
Report
2007



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► The Scheme

The Ombudsman for Estate Agents (OEA) Scheme was established 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 the Royal Institution of Chartered Surveyors (RICS); to all corporate estate agents; and to other independent estate agents who can provide the necessary references and carry appropriate Professional Indemnity cover.

The OEA offers an independent service for the resolution of disputes between member agencies and buyers, sellers, tenants or landlords of residential property in the UK. The Scheme is also approved under the Housing Act 2004 as a redress scheme in relation to Home Information Pack disputes.

The Ombudsman is entirely independent of member agencies and he reports to an independent Council. He provides a fair and impartial resolution of disputes which fall within his Terms of Reference. Resolutions are designed to achieve a full and final settlement of the dispute and the Ombudsman can where appropriate make an award of financial compensation up to £25,000. The Ombudsman will not normally review a case until the internal complaints procedure of the member agent has been exhausted. The service is free to complainants.

The OEA has a Code of Practice for Residential Sales which has been approved by the Office of Fair Trading, and a Code of Practice for Residential Letting Agents and Property Management. Other than those member agents who have registered for HIPs only redress, the provisions of the Codes are mandatory for member agents.

Copies of the Ombudsman's Terms of Reference, the Codes of Practice, Consumer Guides and other documents about the operation of the Scheme can be obtained from the OEA at:

Beckett House
4 Bridge Street
Salisbury
Wiltshire
SP1 2LX

Or by telephoning:

01722 333306 (enquiry lines open 09.30am – 4.30pm)

Or from our website: **www.oea.co.uk**

A full list of member agents is available on request from the office or on the website.

► The Council

Chairman



Lord Borrie QC

Gordon Borrie was professor of English Law at the University of Birmingham 1969-76; Director General of Fair Trading 1976-92, and chairman of the Advertising Standards Authority 2001-07. He held various non-executive directorships after 1992 including at the

Woolwich Building Society, and was honorary president of the Trading Standards Institute 1992-97. He has written or co-authored various legal texts including "The Consumer. Society and Law" which went through four editions. He was made Honorary Life Member of the National Association of Estate Agents in 1992. He has been Chairman of the OEA Council since March 2007. Gordon Borrie was knighted in 1982 and made a Life Peer in 1995.

Chairman's foreword

During the impressive seven-year chairmanship of my predecessor, the Baroness Shephard of Northwold, membership of the scheme and the Ombudsman's workload increased considerably. All credit to the new Ombudsman, Christopher Hamer, appointed just before the end of 2006, and his dedicated staff.

I succeeded the Baroness Shephard in March 2007 and in July Royal Assent was given to the Consumers, Estate Agents and Redress Act 2007 which makes it compulsory for residential estate agents to belong to an approved redress scheme to deal with consumer complaints. The long experience, proven independence and achievement of the OEA scheme provide the firm basis for our seeking approval from the Office of Fair Trading under the new Act.

The Parliamentary Ombudsman, Ann Abraham, recently identified the distinctive features of an Ombudsman scheme as method of providing citizens with redress, compared with courts and tribunals, as follows:-

"Ombudsman practice has always prized its relative informality, its common-sense approach to evidence, its inquisitorial process and its capacity to do justice in the individual case unfettered by the burden of binding precedent."

I inherited from the Baroness Shephard an established Council membership whose various skills have been brought to bear in sharpening up the work of the Council's various committees - Discipline and Standards, Finance and Personnel, Strategy and Corporate Governance - and in encouraging greater transparency so that the Ombudsman's work is better known to the public.

In case of any questions about the way in which the Ombudsman conducts his cases, and Independent Reviewer, Mr Cyril Lanch, was appointed in October 2007.

Altogether a useful and busy year and much preliminary work done on which we can build in future years.

Members



Jane Vass

Jane Vass is financial services policy adviser at Age Concern England. She was previously an independent consumer consultant specialising in financial services, having been head of the Financial and Economic Research Group at the Consumers' Association, and a member of the Financial Services Authority Consumer Panel. She is also the author of consumer publications on tax.



Noel Hunter OBE

Noel Hunter currently chairs the Executive Board of the Trading Standards Institute, the professional body representing trading standards officers throughout the UK. He also serves as a Warden (Director) of the Birmingham Assay Office and as a member of the Board of the European Union sponsored EMARS project, co-ordinating market surveillance of product safety in Europe. He has also 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.



Mary Wilson-Jones

Mary Wilson-Jones is a Consumer Protection Consultant and, prior to her retirement in 2002, worked for 14 years on consumer protection issues at the Office of Fair Trading. There she specialised in all aspects of estate agency and also worked closely with the Trading Standards Service. She is an Associate member of the Trading Standards Institute.



Diana Wright

Diana Wright is a journalist specialising in Personal Finance. She was editor of The Sunday Times Money section for 10 years to 1995, and since then has been a regular contributor to the paper. She currently writes a weekly column dealing with readers' money problems and resolving their disputes with financial institutions. She is also a member of a review group moderating examination papers for the Institute of Chartered Secretaries and Administrators.



Lord Best OBE

Lord Best is President of the Local Government Association: Chairman of the House of Lords Audit Committee: a trustee of the Royal Society of Arts: a Trustee of The Tree Council: Chairman of Hanover Housing Association: Chairman of The Giving Forum: Vice-Chairman of the All Party Parliamentary Group on Urban Development: 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: A Member of the Audit Commission Housing and Regeneration Board.

He has previously acted as Chief Executive of the Joseph Rowntree Foundation and as Chief Executive of the Joseph Rowntree Housing Trust.

► Ombudsman's Report

for 2007



Peter Bolton King

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), together with ICBA, NAVA and FOPDAC. He has

over 35 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'. As the Association's principal spokesperson, he is frequently asked by the media for opinion on property related matters and Estate Agency. He sits as the NAEA representative on many industry and Government working parties and forums, and is in close contact with other European, American and Worldwide property Associations. He is Vice Chairman of the International Consortium of Real Estate Associations (ICREA).



Bill McClintock

Bill McClintock was appointed Chief Operating Officer for the Ombudsman for Estate Agents Company Limited (OEA) in January 2003. In addition to that role, he was appointed Chairman of OEA Limited from 1 January 2004. He has been connected with estate agency for 40 years

and is a Fellow of the Royal Institution of Chartered Surveyors and a Fellow of The National Association of Estate Agents.

Secretary to the Council:

Frances Hanks

Introduction



This is the second time that I have reported as Ombudsman for Estate Agents although really only the first time I will be writing about my own experience as Ombudsman. My previous annual report for 2006 largely reflected the work of my predecessor and my input then was to look ahead at the likely developments that would have implications for the scheme in 2007.

In this report I continue the approach of a retrospective look at the work we have done during 2007 and a perspective of things to come, for example, developments in legislation, which will have a significant effect on the way the Ombudsman for Estate Agents (OEA) scheme operates. The report includes summaries of some actual cases, some key messages for our main stakeholders (both agents and their customers) along with statistics on the workload of the office, and the types of disputes we have received.

Membership of the scheme has grown significantly during 2007. We can now claim around 85% of estate agency firms as members. This growth has been brought about, at least in part, by two pieces of legislation; the requirement for estate agents conducting Home Information Pack (HIPs) related business under the Housing Act 2004 to join an approved redress scheme; and the forthcoming implementation of the Consumers, Estate Agents and Redress (CEAR) Act 2007 due to come into effect later this year which will require estate agents to join an approved scheme for all aspects of their business. It means that a greater number of estate agency firms are now committed to abiding by the standards laid down in the OEA's Code of Practice; and that buyers and sellers using their services have access to independent redress. I cover both these important statutes later in this report.

Last year, I said that I had become Ombudsman at an exciting time, both for the scheme and the residential property sector as a whole. As well as the legislative developments there are two major reviews currently underway: the Wider Property Review being conducted by the Department for Business, Enterprise and Regulatory Reform (BERR), formerly the DTI, and the Carsberg Review of Residential Property. These are due to report during the course of the year and the OEA has contributed to both. I think the exciting time continues!

Our Work in 2007

In 2007 my office received 12,052 enquiries of various types. Some of these were very general in nature whilst others related to matters outside my terms of reference. Enquiries that were outside my terms of reference included some about mortgages or legal services. Other enquiries, were excluded because they were not referred to me within the required timescales. It is a requirement of my terms of reference that anyone with a complaint against a member agent must make that complaint to the firm within a year of the event in question and once that agent has produced its final response, the complainant then has six months to refer the subsequent dispute to my office. In my view it is both desirable and necessary that there are clear time limits imposed in this regard and I do not think that the current limits are restrictive to consumers. Occasionally I am faced with disputes that have overrun these timescales and where there are unavoidable reasons for the delay, I will approach the member agent to seek agreement to consider the matter.

Over half of the initial enquiries I receive do, however relate to matters I could consider. When my office is contacted my Initial Enquiries Team will provide advice and guidance as to how the matter can be taken forward. The first step for those making these enquiries is to ask the member agent to formally consider the complaint. All agents who are members of the OEA must follow a formal process of consideration of complaints which ends up with a formal and final response to the complaint, usually the Managing Director or Chief Executive. If that does not resolve the issue then the individual can bring what has escalated to a full dispute to my office.

History has shown me that around 22% of these enquiries will return to me as formal disputes. At the moment we do not know what happens with the other 78% but as I noted in my Quarterly Report at the end of September I will be carrying out some research into how these matters have been resolved. I am pleased to say that Which? has offered to help in framing this survey and I am grateful to that organisation for its assistance.

For 2007, those initial enquiries that progressed into formal disputes amounted to 870 across my sales and lettings jurisdiction. This represents a 48% increase on the 2006 figures. This growth

correlates broadly to the increase in our membership, so whilst I have seen more work, the individuals with these disputes have at least been able to have the matter heard through an informal but independent resolution facility rather than, if firms remained outside the OEA, having to pursue the matter through the courts, or worse, simply giving up.

My office resolved 795 disputes compared to 489 in 2006 and we dealt with around 50% of these within 90 days and 87% within 120 days. Our aim is to deal with 60% within 90 days and 90% within 120 days but a heavier than expected workload in the last quarter of 2007, particularly in relation to lettings, meant that we fell short of our target.

The complainant was supported, either in full or in part, in 62% of these disputes and I made awards amounting to £268,880 over 492 individual disputes with the highest award being £8,240.

A full analysis of the year's workload appears at Annex A

Membership

At the end of December 2007 the Scheme had a total membership of 5,386 firms operating out of 12,344 branches. We estimate this to represent 85% of estate agents operating in the UK.

Members are a mix of sales offices and lettings offices, with some offering both services. The major proportion of my membership are members of the National Association of Estate Agents (NAEA) and that organisation is a firm supporter of the scheme. This means that if I find that an individual or group of member agents are not following good practice, in addition to my own steps in feeding back to the firm(s) or sector I can also relay my concerns to the NAEA as a way of ensuring that practices are improved for the benefit of consumers.

One of the main factors that has prompted the large increase in membership over the past year has been the requirements of the Housing Act 2004 in relation to Home Information Packs. The Act requires that any firm that wants to conduct HIP-related business must join an approved redress scheme. This requirement is in fact quite narrow as the Act only applies to England and Wales and redress only covers HIP-related disputes. It is therefore commendable that of the 2,678 new members who joined the OEA in 2007, only 459 opted for the narrow definition with the remainder choosing to become full members of the Scheme, adhering to the Code of Practice.

Lettings

Since 1 June 2006 I have had a jurisdiction for dealing with disputes from landlords and tenants in the private rented sector about their letting agent or property management firm.

As this was a new aspect of my jurisdiction it has taken some time for formal disputes to arrive at my office. It was only in the final quarter of 2007 that I began to see more substantial numbers of disputes relating to lettings. Based on the number of initial enquiries received, I expect this trend to continue throughout 2008.

During 2007 I received a total of 99 lettings disputes. Currently we sub-contract the work to The Dispute Service (TDS) but it is my office that determines whether a matter falls within jurisdiction. If it does TDS then considers the dispute against, amongst other relevant documents, my terms of reference and the Lettings Code of Practice. We are just starting the process of seeking approval in respect of the Lettings Code under the Office of Fair Trading (OFT) Consumer Codes Approval Scheme.

Decisions that are issued are my decisions. During the course of the year I have worked with TDS to fine tune our procedures and approach and I am confident that we are providing a quality, consistent and seamless service to members and consumers. I thank all at TDS for their contribution.

Of the disputes resolved through this arrangement, 38 in total or just over 55% were upheld in whole or in part.

Code of Practice

When I am considering disputes I take into account legal principles, the relevant law, my terms of reference and what I consider to be fair and reasonable in the circumstances presented to me. I also particularly measure disputes against the OEA Code of Practice.

The Code of Practice for Residential Sales attained approval from the OFT under the Consumer Codes Approval Scheme in 2006 and full sales members of the OEA can display the OFT logo alongside the OEA logo in their advertising, displays and literature.

As a condition of code approval the OEA is obliged to report serious breaches of the Code to the OFT and to have in place its own disciplinary arrangements to ensure that seriously recalcitrant members do have appropriate action taken against them. The OFT has powers under the Estate Agents Act 1979, in extreme circumstances, to ban an estate agent from operating.

When I am considering disputes I regularly come across situations where the agent has not followed the requirements of the Code. In the majority of cases the issue has not had a serious impact on the consumer and whilst the individual rightly feels disadvantaged it is clear to me that the transgression is administrative failure or incompetence and not a deliberate breach of the rules. I will generally therefore deal with the matter as part of resolving the dispute with perhaps a compensatory award for the aggravation, distress and inconvenience resulting from the failing; and occasionally I will include a remark of admonishment in my decision or in a separate letter to the firm.

However I am an Ombudsman; my job is to resolve disputes and award compensation to those consumers who are disadvantaged. I am not a regulator; the proper disciplining of firms is rightly outside of my remit. Therefore if I find a serious breach of the Code or where there is a failure to cooperate with my investigations then I will report individual firms to the Disciplinary and Standards Committee (DSC) of my independent Council. During 2007 the DSC considered 2 cases where I had asked the member agent for an explanation of the events surrounding the breach and what action had been taken to rectify the situation. The DSC's role is to consider what disciplinary action would be appropriate and to recommend a course of action to the full Council. It is at that point that the matter where the DSC considered it appropriate, would be referred to the OFT. In 2007 no such referrals were necessary.

The 2 cases considered by the DSC related to non-payment of my awards and although the DSC has determined the necessary action, these matters have yet to be closed.

A further requirement of the OFT approval is that members must commit to monitoring the satisfaction levels of their customers (both buyers and sellers) and to ask whether they considered that the agent had adhered to the requirements of the Code. This analysis is carried out for the OEA by a third party and the results are posted on our website. The main trends are shown as part of the Report from the Board which can be found at the end of this publication. These results are generally positive but in summary, 89% of sellers and 84% of buyers said they were generally satisfied with the service they received; 89% of sellers and 82% of buyers reported that the agents they dealt with were complying with the relevant aspects of the Code of Practice.

78% of sellers said that they had a good awareness of the OEA whilst the equivalent figure for buyers was 65%.

Customer Satisfaction

The OEA is also concerned, and rightly so, with the views that our own 'customers' have of the service we have provided in resolving their disputes. We carry out regular research on this which gives us feedback on how we can further improve the service and whether we are meeting the needs of those that refer disputes to the Scheme.

The full results of this research for 2007 are shown at Annex B. We had a response rate of 48% with just over two-thirds of respondents expressing satisfaction with the service they had received (in percentage terms a little higher than last year; and possibly not surprisingly, a greater number of respondents finding out about the scheme from the internet).

Feedback and Communication

Annex C provides examples of some of the disputes I have resolved, together with details of the more common reasons for disputes, both for sales and lettings. I hope that in the future some of the disputes that arise and concern similar circumstances can be resolved without my involvement as my thinking is known. While no one case can be a clear precedent there are often common threads.

To enhance feedback to member agents I introduced a quarterly report from my office. This is intended to be a brief bulletin about the trends in our workload, providing more examples of cases and highlighting issues that I think should be addressed. I will continue this in the coming year.

In dealing with cases I occasionally come across issues where I feel I need to gain an industry view on a particular matter and to gain a better understanding of market practice to enable me to achieve a fair resolution. During 2007 I carried out two 'consultation' exercises with a cross section of member firms. These covered measurement of land (where a significant area is involved) and how firms might approach the giving of advice to a seller in a particularly sensitive situation.

Also in the general context of communication I have continued to contribute to conferences, seminars and presentations when asked to do so. I see this as an important aspect of my role in publicising the Scheme and improving awareness of what I do and how I do it. With such a large increase in membership I am particularly keen to speak with as many groups as I can so that new members have an understanding of their obligations; and of course I would hope that I can reach out to non-members as well. I recently visited Belfast where there are currently some existing members, but also many firms that have not as yet joined. We had a lively discussion against a backdrop of Halloween night fireworks and festivities.

Future Developments

National Approved Letting Scheme

As 2007 drew to a close we entered into an agreement to provide a dispute resolution service for disputes arising between consumers and firms accredited by the National Approved Letting Scheme (NALS). This agreement commenced formally on 1 January 2008 and sits easily with what I currently do as many NALS accredited firms are already members of the OEA either as sales members or lettings members (or both). With our existing lettings jurisdiction and the Lettings Code of Practice we have built up a level of expertise and familiarity with private rented sector issues. I look forward to working with NALS.

Home Information Packs

My office has received numerous enquiries about HIPs, from both member agents and consumers, and as I write this report in early 2008 my first HIP dispute has arrived. I have always said that HIPs-disputes will be about charging for the Pack, not giving the prospective buyer a Pack when asked for it, charging the prospective buyer too much for a copy or about a situation where an agent has been led into commenting on the content and has somehow misled the prospective buyer.

Although my first complaint is strictly in my 2008 workload I think it relevant to indicate how I have considered the issue which concerns a dispute about the charge for a HIP. I have publicly stated that if a seller is charged for a HIP on dis-instructing an agent, but the Pack was advertised as free and the seller's understanding that it is a free pack is on the basis that there was nothing advising him that a charge applies if he dis-instructs the agent, I am likely to find against the firm. If however the seller claims he was told the pack was free, and has no evidence to support that, but the agency agreement is absolutely precise about the conditions under which a charge for the Pack applies (and these are the circumstances now presented to me) then I am going to uphold the contractual position. I have also said previously that I firmly believe that disclosure at the point of sale is vitally important (whether HIP specific or otherwise). The best approach for both the firm and consumers is to have a clause in agency agreements stating that a separate charge applies for the HIP and what that charge is, or a clear statement of when (if at all) that charge will be waived.

Consumers, Estate Agents and Redress Act 2007

This Act received Royal Assent on 19 July 2007 and my understanding is that the provisions of the Act were to be implemented in April of this current year although at the time of finalising this report the OFT have issued a statement that

implementation is to be delayed. Amongst other things the Act requires all estate agents to join an approved redress scheme. The Act does not cover the private rented sector so there will remain some inconsistency of protection for consumers taking alternative approaches to their residential accommodation.

In November 2007 the OFT published its criteria for approving redress schemes under the CEAR Act. The OEA has submitted its application against the 16 detailed criteria and we have responded to the OFT's further requests for information. I remain confident that we have a robust structure, a clear track record in dispute resolution for residential property matters and the recognition by both firms and consumers alike I therefore remain confident that our application will be approved.

The Act will have an impact on the estate agency sector as all firms will be legally obliged to offer buyers and sellers access to a redress scheme. There will be some firms that have not, for whatever reason, yet signed up to the OEA. There are firms who will need to upgrade their membership from HIPs-only to meet the requirements of the CEAR Act. The OEA, if its application is approved, will not be able to insist that firms sign up to our OFT-approved Code but I hope that they will do so voluntarily so that consumers are provided with consistency of treatment.

Closing Remarks

We have a busy year ahead. I forecast another significant increase in workload, with the consequence of us needing to ensure that our systems and procedures can cope. Assuming that the OEA is approved under the CEAR Act by the OFT we will see further development of the scheme and we will be closely monitored in our performance by that body.

The staff in my office at Salisbury have dealt magnificently with all the changes and pressures that we have experienced during 2007. My Initial Enquiry Team and the Case Administration Team have all absorbed the additional workload so far and I have no doubt that with their usual application and commitment we can handle the coming year. The figures of disputes resolved indicate how much effort has been put in by my case officers and the membership increases indicate how hard the membership department has had to work during 2007. A list of staff in post as at 31 December is at Annex D and I do thank them sincerely for their support.

I look forward to all the challenges and pressures during 2008.

General Statistics

2006 1st January - December 31st					2007 1st January - December 31st	% Difference
1	GENERAL ENQUIRIES					
	From Estate Agents (does not include membership)		256	429		
	From the Media		68	45		
	From the Public		381	465		
	From the Letting Agents		0	6		
	Total		705	945		34
2	COMPLAINT ENQUIRIES AGAINST ESTATE AGENTS					
a.	Complaints against non Member Agents/Lettings Agents		3696	3211		
	Sub Total 1		3696	3211		-13
b.	Complaints against Member Agents outside Terms of Reference (eg time, mortgage, lettings, survey)		596	691		16
c.	Complaints against Member Agents within Terms of Reference					
	From Complainant who is a seller		1997	2985		
	From Complainant who is a buyer		1219	1761		
	From Complainant who is a seller and buyer		92	147		
	Complainant unwilling to state whether buyer or seller		113	185		
	Letting complaints (as from 1 June 2006)		175	969		
	Sub Total 3		3596	6047		68
d.	Insufficient info given as to whether Member/Non-Member (A)		0	574		
e.	Complaints against all Agents		582	584		
f.	Complaints against all Agents		8470	11107		31
3	COMPLAINTS REVIEWED - CASES DEALT WITH IN YEAR					
a.	Workload (ie New cases received in year) (1)	Total	586	870		48
b.	Productivity:					
	Cases reviewed in year (2)		485	847		75
	Representations conducted in year (3)		99	143		44
	Total		584	990		70
4	CASES CLOSED IN YEAR = OUTCOME (2)		489	795		63
a.	Description of Complainant					
	Seller		373	522		
	Buyer		94	193		
	Seller & Buyer		20	39		
	Other (Tenant/Landlord)		2	41		
	Total		489	795		63
b.	Findings:					
	Outside Terms of Reference/Not Pursuing		9	13		
	Complainant Withdrawal/Complainant & MA resolution		1	4		
	Against Complainants (no Award made)		182	286		
	Sub Total 5		192	303		
	For Complainants (Award made - Member Agent made No Offer)		223	377		
	For Complainants (Award made - Member Agent made Offer) (4)		74	115		
	Sub Total 6		297	492		
	Total/Sub Total 5-6		489	795		63
c.	Size of Awards					
	£1 - 99		36	84		
	£100 - 499		181	272		
	£500 - 999		42	74		
	£1,000 - 2999		33	42		
	Over £3,000		5	20		
	Total		297	492		
d.	Total value of Awards made	Total	£150,601.26	£268,880.53		

1 This represents the Workload for the year - started by the receipt of the Complaints/Waiver Form from the Complainant.
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 Decision.
4 Cases where the Ombudsman endorsed, increased or lowered offers already made by MAs. Also includes "early redress" cases.
Web Site Hits: For 2006 -179,068. For Jan - Dec 2007 741,290. Highest Award: - £17,948. (2005)

► Supplementary Statistics

Complaints against member agencies outside terms of reference	2006 (1 January – 31 December)	2007
Outside OEA Time Frame	54	123
Letting	181	21
Mortgage Advice	66	55
Survey	14	11
Complaint Already Dealt with By Court	12	11
Not Actual client of MA	37	73
Not Buyer/Seller	62	68
Agent Versus Agent	24	48
Commercial Property	20	14
Building Plot	0	6
Special Terms	2	0
Touting	2	4
Overseas Property	2	7
Other	115	242
Solicitor	5	8
TOTAL	596	691

REPRESENTATIONS COMPLETED		
No. of Cases Involved	94	133
No. of Representations	99	143
From MA	20	34
See Note (1)		
From Complainants	79	109
See Note (2)		
TOTAL		

Results of Representations

13 findings reduced and 21 findings unchanged

15 findings increased, 1 findings reduced and 93 findings unchanged

► Analysis of Complaint Information

Agency Type

68%	Sole Agency
1%	Joint Sole Agency
4%	Multi Agency
2%	Sole Selling Rights
1%	One Off Viewing
24%	Buyers

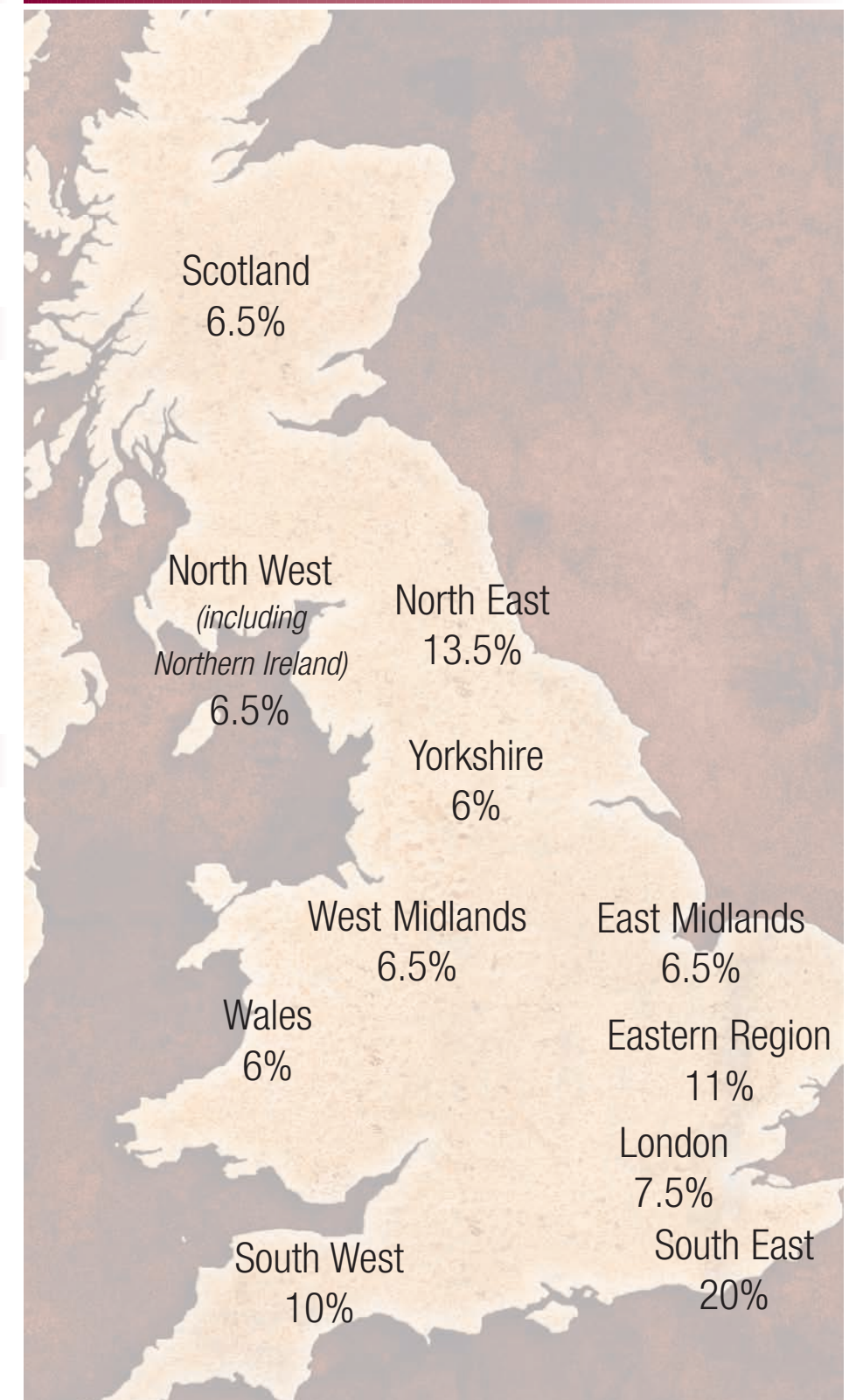
Property Type

1%	Bungalow
1.5%	Bungalow – Semi
1%	Bungalow – Link
31.5%	House – Detached
28.5%	House – Semi
25%	House – Terrace
1%	Maisonette
10.5%	Apartment/Flat

Value of Property

7.5%	<99k
15%	100 – 149,999k
18%	150 – 199,999k
27%	200 – 249,999k
13%	250 – 299,999k
6%	300 – 349,999k
7%	350 – 399,999k
2.5%	400 – 499,999k
2%	450 – 499,999k
2%	>500k

By Area



► Nature of Complaints

Within Terms of Reference

Initial Enquiries / Complaints	2006	2007
Maladministration	2631	3823
Commission/Fees	1193	2031
Sales Particulars	714	1089
Buyers Finances	245	341
Viewings	278	317
Communication of Offers – Buyers	238	337
Conflict of Interests	195	354
Initial Valuation for Sale	188	253
Sale/Letting Boards	125	188
Keys	94	177
Communication of Offers-Seller	79	101
Offer of Services	42	107
Unfair Bias Towards Other Party	28	94
Request for Identification (new since Aug 2004)	11	41
Sealed Bids	13	29
Discrimination:		
Unspecified	5	17
Racial	8	11
Gender	2	3
Disability	0	1
Deposit	0	425
Management Failure		359

Cases Formally Reviewed		
Maladministration	445	1004
Commission/Fees	303	556
Sales Particulars	158	369
Buyers Finances	99	188
Viewing	77	155
Conflict of Interests	48	127
Initial Valuation	65	109
Sale Boards	43	97
Keys	36	81
Communication of Offers-Seller	22	62
Communication of Offers-Buyer	18	51
Unfair Bias towards Other Party	6	22
Gazumping	7	20
Request for Identification (new since Aug 2004)	0	5
Discrimination:		
Racial	3	3
Offer of Financial Services	1	2
Gender	0	1
Disability	0	0
Management Failure		10

Notes:
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 Maladministration is a “catchall” complaint which normally includes other categories as well.

► Customer Satisfaction

Survey 2007

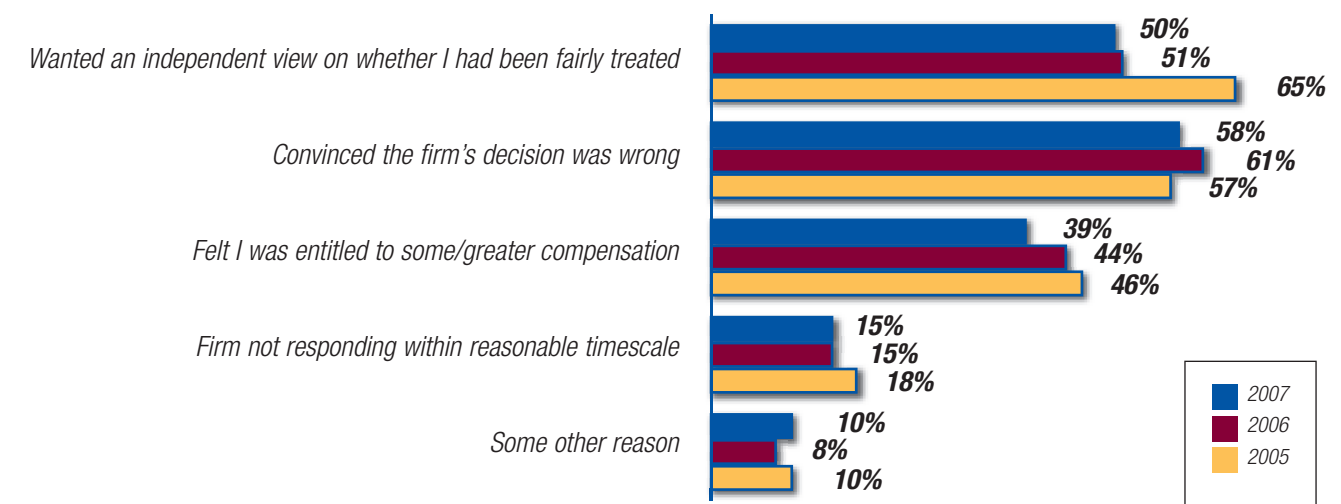
As in previous years, we have conducted a customer satisfaction survey by sending out questionnaires to a sample of complainants for cases closed in 2007. We received a high response rate of 48%. The results for 2007 were independently analysed for us by Referenceline Ltd.

Approaching the Ombudsman

The main motivations for complaining to the Ombudsman remain similar to the two previous years in which we have carried out the survey. In round numbers:

- 60% of people feel convinced that the firm's decision is wrong
- 50% of people want an independent view of their treatment and
- 40% of people feel entitled to (greater) compensation.

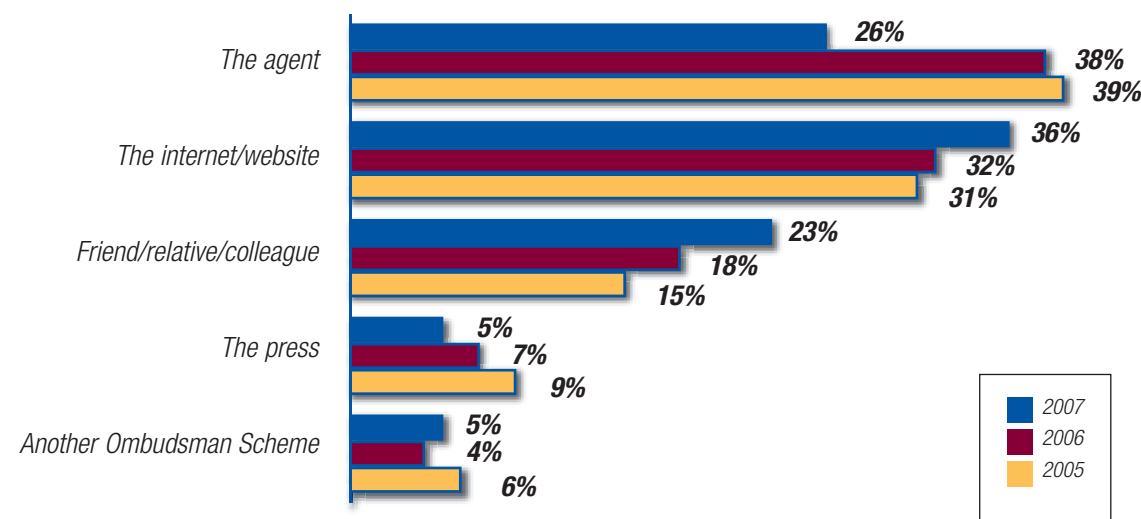
Why did you decide to refer your complaint to the Ombudsman?



*Percentages total more than 100% because more than one option could be chosen.

As might be expected, the Internet is a growing source of information about the OEA (36%, up from 32%) and Word of Mouth from Friends, Relatives & Colleagues has also grown (23% up from 18%). The proportion of those hearing about the OEA from the Agent as the first source of information was 26% down from 35%. This is an odd result as all members of the scheme are required to make known their membership of the OEA at the outset of the relationship with a buyer or seller and it perhaps indicates that it is only when someone has a complaint that they start to research how to pursue the matter through an independent body. The trend in Internet use would be consistent with that notion.

How did you first hear about the Scheme?



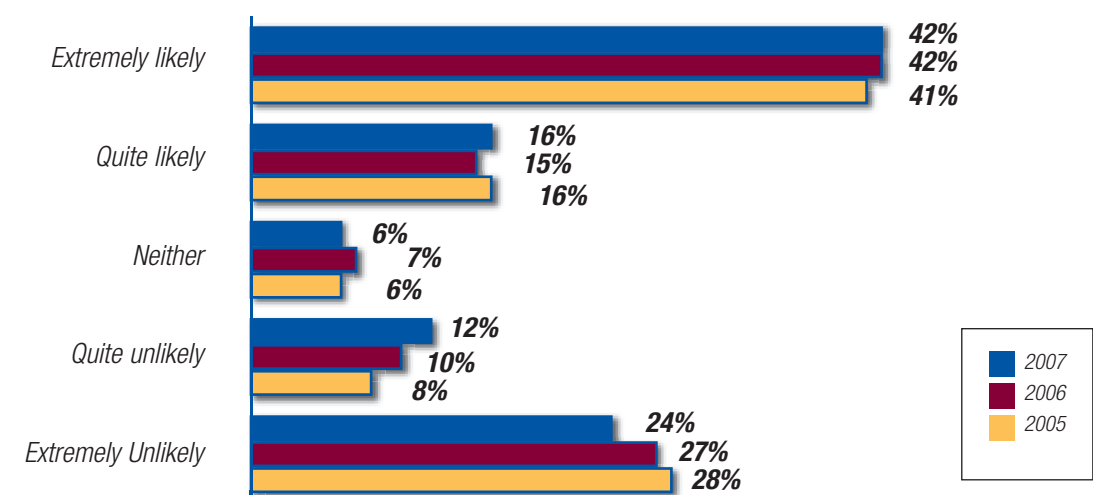
How do complainants find dealing with the OEA?

Complainants were asked a number of questions about the administration of their case. Most of these indicators have improved in 2007 over the previous year (2006 shown in brackets):

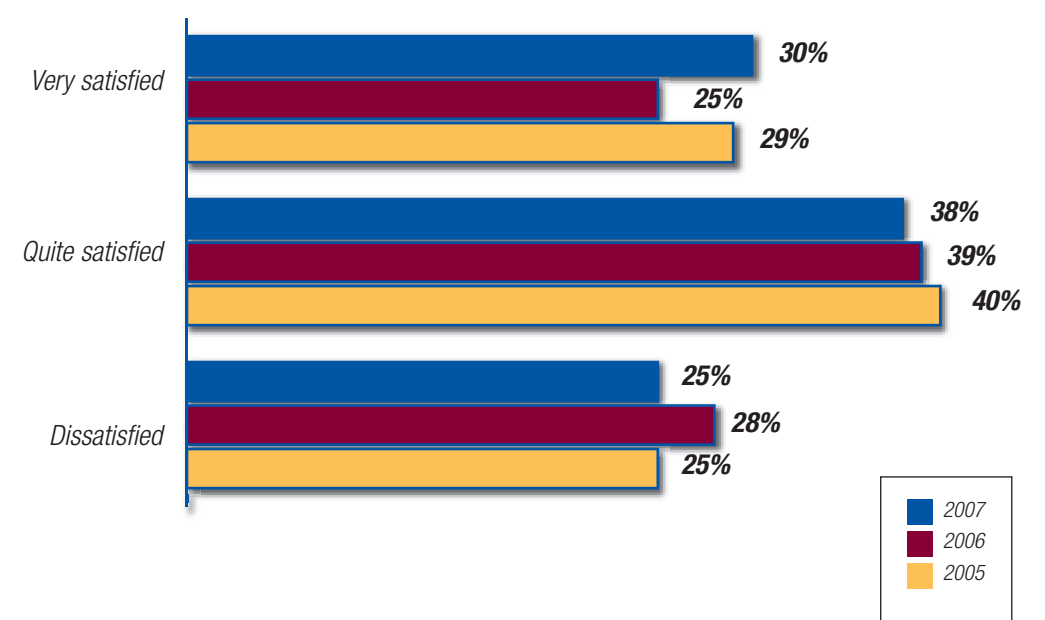
- 86% (85%) of complainants told us that complaining to the OEA was very or quite easy
- 92% (90%) of complainants rated staff as very or quite polite
- 81% (83%) said that on first contact staff explained clearly how their case would be handled
- 85% (81%) were satisfied with the clarity of the letters sent to them
- 86% (85%) found our guidance for complainants helpful
- 74% (65%) agreed that the OEA kept them well informed
- 70% (73%) were satisfied with the time taken to resolve the case
- 69% (65%) were satisfied with the service overall

Would you Recommend the OEA?

Just under 60% of complainants responding to the survey say that they would recommend the OEA to family or friends if they had a problem with an estate agent. This figure has been at the same level for the past 3 years, but there appears to be a steady decrease in the proportion of people who say that they would be extremely unlikely to recommend the OEA.



Overall satisfaction with service



► Case Summaries

Annual Report 2007 - issues arising from cases

I have included some summaries of cases dealt with during the year. It should also be noted that brief summaries are now shown on the website at www.oea.co.uk and the examples are updated every month.

The following are some typical issues that have arisen in the disputes that I have dealt with:

Sales

Incomplete branch records

Apart from being a requirement of the Code of Practice (paragraph 1h) I find it difficult to understand how a firm can properly transact its business without proper records. By that I mean recording every action that occurs. An absence of record also means that the firm has no way of countering the claims made against it, which is particularly relevant where I am told that communication was poor or that telephone calls were made and certain information imparted or perhaps that calls were not returned.

Failure to handle the complaint properly

Again this is a requirement of the Code of Practice (paragraph 12a to 12f) and my office has issued comprehensive guidelines on how firms should structure their internal processes. I see many disputes where I do not support the complaint against the firm on the main issue at dispute but where I do find against them because the handling of the matter in the first place has been poor or tardy. A complaint not properly handled in the first place may escalate to something more intense.

Fee liability

This is particularly relevant where the potential for dual fees arises. If an agent is disinstructed it is vital that he gives the required warnings and information under paragraph 3m of the Code of Practice. If the agent receives an instruction knowing that a previous agent has been instructed then he too should give the appropriate cautions. Ideally the two agents should get together and sort out any potential fee conflict before it becomes an issue. My general approach will be for one fee to apply and where I can I will attempt some proportionate division of the fee and applying that concept.

Cash buyers

I see many cases where a seller complains because their prospective buyer has been advised to them as a cash buyer. Having proceeded on that basis to find a new property the seller has been brought up short when it emerges the buyer actually has to obtain a mortgage or would only achieve cash buyer status on the sale of another property which is not in a chain. I take the stance that a cash buyer is one who has funds either readily available or funds held in an account with a reasonably short withdrawal notice period. A cash buyer is not someone who has a property to sell to release their funds nor one who is seeking a mortgage. Agents should always make every attempt to establish precisely where funds are coming from and relay what they know to the seller.

Associated services

A number of estate agents now have their 'own brand' legal services, conveyancing or financial services divisions. These are quite distinct entities but for buyers and sellers the appearance is that they are one and the same. I take the view that disclosure is important and firms should be absolutely clear and precise about the connection or non-connection between the estate agency and the other division(s). I can only consider the actions of the estate agency and this demarcation of roles has not always been clearly explained at the outset. I should also emphasise that under paragraph 6c of the Code of Practice there should be no compulsion on buyers to use other services that may be offered.

Agency agreements

I still see Agency Agreements that, to my mind, push at the limits of acceptability under the Estate Agents Act 1979. There are distinct definitions for Sole Agency, Sole Selling Rights and a Ready, Willing and Able contract. The terms of a contract must be clearly and unambiguously stated in writing and the seller must be clearly advised as to their liability. I have seen examples of contracts which are titled 'Sole Agency' but then go on to claim, in the small print, sole selling rights. The nature of an agreement must be specific and what is purporting to be a sole agency must be just that.

Lettings

Accuracy of information in marketing particulars

A prime example of failure in this regard is advertising a property with a parking space when none is available. It must be remembered that the marketing material is a prime element in the tenant's attraction to the property and if the agent has not been sufficiently diligent in establishing the exact situation on aspects such as parking then any dispute is going to go against them.

Repairs

Any repairs to reported defects in properties should be carried out within a reasonable period of time. A complaint is likely to arise if a tenant has been without proper services for any extended period.

References

Adequate references should always be obtained to further the extent to which landlord clients are protected. Prospective tenants should be clearly informed that charges for obtaining references are not necessarily refundable even if the tenancy does not proceed.

Comprehensive property visits

Agents should make clear to landlords the scope and extent of property visits and ensure that these are carried out within the frequency indicated in their terms of business.

Sealed Bids

When there are a number of interested buyers in a property an Agent may suggest to the Seller to seek offers through sealed bids. This is a process where all interested parties are requested to put to the Agent their best and final offer on the property by a given time with those bids being opened at an appointed time.

In a recent dispute that was brought to me the Complainants alleged that the Agent had colluded with the other potential buyer advising them of the Complainants' offer after the bids had been opened and allowed them to amend their bid in order to secure the Property. The Complainants were not able to provide any evidence to support their allegation and it would appear it was pure speculation on their part. However, when examining the Complaint I discovered that the Agent had not conducted the process fairly and transparently in that the Agent had opened the bids without a witness being present, thus leaving himself open to such an allegation. The complaint was supported in so far as the process by which the sealed bids had been conducted. I made an Award of £400 for distress and aggravation on the part of the Complainants.

This may seem a useful mechanism to bring a sale to a conclusion but great care is needed on the part of the Agent to be seen to be fair and impartial. I would suggest that it is for all interested parties to be present at the opening of the bids or failing that having an independent third party to be present.

In 2007 I had a case where a buyer who initially lost in the sealed bid process, eventually bought the property by putting in a higher offer after the sealed bid process had been completed. The buyer who lost the property then complained. I did not find in his favour as the Agent had followed best practice throughout the whole process and could prove, through good record keeping, that all parties were informed.

Agents need to inform all parties of a basic principle which governs the transfer of residential property that it is the Sellers' decision as to who they sell their property to. I say this as it is not uncommon for a higher bid to subsequently be made which Agents are obliged to put forward to the Sellers for their consideration.

Complaints Handling

During 2007 I have seen numerous disputes where I have not supported the original complaint but during the course of the examination I have found the manner in which the complaint was handled to be lacking and made an Award to compensate for the additional aggravation, distress and inconvenience that this has caused a Complainant.

All Complainants deserve a thorough investigation of their complaints and the OEA Code of Practice sets out clearly what I expect from a Member Agent. My Terms of Reference state that all complaints should first be investigated by the Agent to give them the opportunity to resolve the dispute. During a recent investigation an Agent did not have an internal complaint procedure which should have been readily available in each office for consumers. There was no record of the verbal complaints that had been made and the Agent did not follow the Code in terms of when they had to respond to the complaint. Finally the Agent did not advise the Complainants that they could refer their complaint to me for an independent assessment of their dispute. Even though an Agent may feel that a complaint is unjustified, they do have a duty to follow the OEA Code of Practice that they have signed up to and respond to complaints in the manner which has been laid down in the Code of Practice.

During the course of 2007, my terms of reference were reviewed and amongst some of the changes was a change to when I will automatically take a complaint. If a Complainant can show that they have tried unsuccessfully to bring a complaint and received no response or the Agent appears to be delaying the investigation by more than 8 weeks I will take the complaint without giving the Agent the opportunity to investigate it first. However, if an Agent chooses to

follow this route the Agent should recognise that they will have breached certain aspects of the Code and I will make an award to reflect the distress and aggravation this causes the Complainant.

Problems of a Private Sale

The Complainants accepted an offer from a property developer after the Agency Agreement had been terminated. Sometime after the property was sold the Complainants alleged that it was brought to their attention that an offer which was nearly £9,000 more than they had accepted from the property developer had been made to the Agent but had not been put forward to them.

The Complainants were not able to support their allegation with any details of who was the potential buyer or who was the source of this information. The Branch File did not support the notion that there were any interested parties in the property; therefore I did not support the complaint. Furthermore, I was not persuaded that the Agent could reasonably be held responsible for the consequences of the negotiations between the Complainants and the property developer as the Agent was not involved in these negotiations. It was for the Complainants to decide to whom and at what price the property was sold.

Property Descriptions

Under paragraph 4l of the OEA Code of Practice, there is no obligation on the Agent's part to disclose information about a property to potential buyers that may adversely influence the potential buyer. However, paragraph 4k of the OEA Code of Practice states that all advertisements have to be legal, decent, honest and truthful in accordance with the British Codes of Advertising and Sale Promotion and Direct Marketing.

The Complainants were looking for a property in central London and a property which was described being "surprisingly quiet surrounded by a vast array of shops, cafes, bars, restaurants and theatres" caught their eye on an Agent's website. The Complainants requested a viewing based on these details.

The Sales Particulars did not make any reference to the quietness of the property. The Complainants viewed the property late morning and made an acceptable offer on the same day. After the survey had been completed the Complainants visited the local pub on a Friday night and decided that the noise levels were unacceptable for them and submitted their complaint to the Agent.

In the Agent's submission he explained that he visited the property and given the location deemed the property to be "surprisingly quiet" when inside. The property was in one of the liveliest parts of central London and renowned for its night life.

I took the view that "surprisingly quiet" was extremely subjective in interpretation for such a comment to be of benefit to potential buyers; individuals differ in opinion as to what would be deemed "surprisingly quiet" in any one particular location. However, I did note that the Sales Particulars did include a warning that indicated that descriptions of the property were subjective and are used in good faith as an opinion and not a statement of fact. This placed the onus on the Complainants to carry out their own investigations into the property. I made the observation that had such a warning also been included in the website publicity material it might have prevented the complaint from being raised.

As a consequence I concluded that responsibility must be shared between both the Agent and the Complainants, the Agent for making a statement about the property which was too general and subjective in interpretation; the Complainants for not taking any action to ensure that the property suited their purpose before they sustained a financial liability. I made an award which was equivalent to half of the Complainants' survey and solicitors' costs together with an element for stress and aggravation.

In another case the Agent inserted in the Sales Particulars that there was permit parking available. Being able to park close to the property was a key element when the Complainant offered on this property. Therefore when he discovered that a local authority residents permit parking scheme was not available to the occupants of the property to allow parking outside, he withdrew from the sale having incurred costs amounting to over £1,500.

The Complainant had referred to a possible breach of the Property Misdescriptions Act 1991. I made it clear that my role was not to consider whether a criminal offence has occurred. My role is solely to consider whether the standard of service provided by an Agent concerned has fallen below that expected of Member Agents of this Scheme, thereby causing financial loss, aggravation, distress and/or inconvenience to the Complainant meriting a compensatory Award.

During the course of my investigation it was discovered that the Agent had sold the property 2 years before and had used the same information that was provided from the previous vendor and had not requested that the sellers of the property to approve the Sales Particulars. However, the sellers had advised the Agent that permit parking was available at a multi-storey car park which was situated a good 500 metres away from the property. I concluded that having read the sales particulars it was reasonable for the Complainant to expect that permit parking was available at the property i.e. outside or in the immediate vicinity. As such parking was not available I made an award which was equivalent to the Complainant's survey and solicitor's costs together with an element for aggravation, distress and inconvenience.

Agency Agreements

I have stated elsewhere in this report that the key document which sets out the contract between both parties is the Agency Agreement so it is always with some surprise I still get so many disputes based around the commission fee. In a recent case the Complainants initially signed a sole agency agreement at a rate of 1.25% of the selling price with Agent 1. After 10 weeks into the agreement the Complainants wanted to instruct another Agent making it a multi agency agreement. Agent 1 produced a Multi Agency Agreement which was signed and stated that a commission fee of 1.5% of the selling price would become due in the event of unconditional exchange of contracts taking place with a buyer introduced by the Agent.

According to the Complainants some five months later they informed Agent 1 that the other Agent was no longer marketing their property and therefore their understanding was that they had reverted to a sole agency agreement. The Complainants have stated that no renewed contract was issued. The Agent had no recollection of any conversation taking place regarding the agency agreement and that if there had been a new agency agreement would have been issued.

I explained in my review that I was not able to reach any formal judgement in respect of an alleged conversation as I cannot take evidence on oath or cross examine the parties in the way a Court of Law might do. I can only make a judgement based on the Agency Agreements that are in existence and in this case the last one in place that the Complainants signed was the multi agency agreement at a rate of 1.5%. I therefore did not support the Complainants' complaint that Agent 1 should have only charged them 1.25% of the selling price of the property when they introduced a buyer.

In another case the Complainants signed a Sole Selling Rights Agreement which provided that a commission of 2% of the selling price would become due in the event of unconditional Exchange of Contracts taking place during the period of the Agency Agreement with a buyer from any source, or after the period of the Agency Agreement with a buyer introduced during the Agency period. During the period of the Agreement the Complainants informed the Agent that they had received a private offer and would like to withdraw the property from the market. The Branch File records that the Agent informed the Complainants of their liability to pay them a fee in the event of a sale. The Complainants wrote to confirm their instruction to withdraw the property from the market.

Shortly afterwards, the Agent wrote to the Complainants advising them of the terms of the Sole Selling Rights Agreement. The Complainants continued with the sale and brought the dispute to me. They stated that the Agent was not entitled to the commission fee as it was based on an incorrect selling price, the sale took place after the contract officially ended and that the buyer was not introduced by the Agent.

Under Paragraph 3a of the OEA Code of Practice, the Agent had an obligation to provide the Complainants with details of their fees, expenses and business terms before they had any commitment to them. The Sole Selling Rights Agreement provided to the Complainants fulfilled that obligation.

It was my view that the buyer was the person who made the offer to the Complainants during the period of the Agency Agreement therefore according to the terms of the contract the Agent was entitled to a fee. The Agreement also made it clear that the fee would be payable if exchange takes place after the expiry of the Agreement period to a buyer introduced during the period of the Agreement. The Complainants did not provide the Agent with the actual selling price of the Property so the Agent based the commission fee on the Asking Price. I informed both parties that for the Agent's claim to be valid it should be for the actual selling price of the Property and invited the Agent to issue a revised Commission Fee invoice to the Complainants.

Unauthorised release of keys

When an Agent takes on the responsibilities of holding keys to a property they have an obligation to ensure that they maintain the security of the property. I was asked to examine the unauthorised handing out of keys to a property which was being sold. The Agent concerned was put under significant pressure by a distant relative of the Complainant to use the property whilst she was staying in the country. The Agent did try to contact the Complainant to confirm whether she had permission but the Complainant was not available. The Agent felt that the relative was telling the truth because she was able to answer questions to which only a member of the family would know the answers, it was getting late and the relative had stated that she had nowhere else to go.

The Agent then further exacerbated the situation by seemingly not making any positive steps to retrieve the keys or indeed to check the condition of the Property during its' occupation by an unauthorised person and the Complainant only found out about the occupation through a third party.

In this case, I considered that the Complainant had suffered significant avoidable and undue aggravation, distress and inconvenience as a result of the Agent's failures in that the poor service would have had a significant albeit passing effect on the Complainant's situation. Whilst the Complainant had been clearly upset I assessed that the effect had been limited in duration and this was endorsed by the Complainant as he had chosen to retain the services of the Agent and had not withdrawn his instruction of the sale of the Property. I made an Award of £500.

Structural Problems with the Property

The Complainant was aggrieved that the Agent had not told him about certain structural problems at the Property he had bought as a result he faced unforeseen costs amounting to £4,000 to repair the chimney breast. The Complainant believed that the Agent had a duty of care to him to disclose what they had been told by the neighbouring owner about the structural condition of the Property.

The Agent did acknowledge that they faced a dilemma but felt they did nothing wrong. The neighbour did tell them on a number of occasions about the chimney breast requiring extensive work but the neighbour never responded to their request for corroborative expert advice to support what was being said. The Agent did pass on the information to their Seller client but there is no obligation on an estate agent to pass information to a buyer which might be adverse to a Property's sale prospects.

However, the OEA Code of Practice does expect an Agent to act fairly to all prospective buyers. The Agent felt that they had to balance two very different responsibilities; to the Seller and to the Complainant. It was the Agent's case that if they had ever seen a structural survey report suggesting that the chimney was unsafe, they would then have disclosed what they had been told. Without such report, there was the risk that what they had been told was at best no more than uninformed opinion and might, for whatever reason, have been a deliberate ploy to jeopardise the sale.

They also took into account that the Complainant had had his own structural survey carried out and nothing adverse had been revealed in terms of the chimney breast. I concluded that although I understood why the Complainant felt so aggrieved; as he had paid a surveyor to advise him and yet in spite of this, he completed his purchase only to discover later the extent of the problems. I also explained the principle which governs the transfer of residential property, the principle of caveat emptor (let the buyer beware). This places an obligation on buyers to ensure that what they are buying suits their purposes.

In this case the Agent had made a goodwill offer of £500 which the Complainant had refused and on the case being referred to me had lapsed. As I had not supported the complaint against the Agent I made no Award but stated that the Agent was free to reinstate their offer of settlement which I urged the Complainant to accept in full and final settlement of this dispute.

Submission of Offers

When there is more than one buyer interested in a property the Agent must endeavour to make sure that they follow the OEA Code of Practice. Under Paragraph 6a of the Code an agent has an obligation to tell the seller as soon as possible about all offers that they receive at any time until contracts have been exchanged. Under Paragraph 6e of the Code an agent has an obligation to ensure that all prospective buyers who have recently made offers through them and which have not been rejected informed of the existence of other offers submitted to the seller.

I have dealt with numerous complaints by buyers who believe that they have been unfairly treated by Agents in regard to their purchase of the Property. In a recent case the Complainants believed that it was due to the handling of the Agent they lost £7,000 and increased trauma due to the 2 week deadline imposed to reach exchange of contracts.

The Complainants made an offer on a property of £180,000 which was accepted by the sellers. The Property was taken off the market and all parties were informed. However, a previous viewer was also interested in the Property and had expressed an interest before the Complainants had offered on the Property but had been unable to proceed at that time. The previous viewer then made an offer of £185,000 which the Agent had to pass to the Sellers. The Agent then informed the Complainants who put in a higher offer of £187,000 the following day. The Sellers agreed to sell the Property to the Complainants provided they exchanged in 2 weeks.

I explained in my review three basic legal principles which applied in this situation:

- The seller instructs the estate agent and therefore it is the seller and not estate agent who decides to whom and at what price to sell. The estate agents advise the seller but cannot tell them what to do.
- An estate agent has a legal duty to act in their seller client's best interests and give advice suited to the seller's aims and needs. They have a responsibility under the OEA Code of Practice to act fairly to all would be buyers, but their primary duty is to their seller client.
- An estate agent is legally obliged to tell a seller about all offers they receive before exchange of contracts, unless instructed not to do so by the seller.

I concluded that whilst I have considerable sympathy for the Complainants, who originally understood that they had secured the Property for £180,000, it was ultimately the seller's decision and not the Agent to accept the increased offer together with an instruction that exchange had to be completed in 2 weeks. I did not find in favour of the Complainants.

Conflict of Interest

Paragraph 9f of the OEA Code of Practice states that if a Member Agent is instructed to sell a property and the Agent, an employee or an associate (or an associate of an employee of the firm) is intending to buy it the Agent must by law, before negotiations begin give all the relevant facts, in writing to the Seller and as soon as possible to his solicitor.

In a recent case it would appear that the negotiator, at the time of the market appraisal, advised the Complainants to replace the carpets within the Property with laminated flooring and double glaze. The Complainants undertook some of the work which was suggested. The negotiator left the company of the Agent and went to work for a property investor. The ex-negotiator then offered on the Property on behalf of the company she was working for. The Agent did not inform the Complainants of the past relationship that they had and they also described her as a private buyer.

In response to the allegation of conflict of interest the Agent contended that as the buyer was an ex-employee and the OEA Code of Practice referred only to current employees, they had not breached the Code of Practice.

I drew the Agent's attention to the definition of "associate" within the Code of Practice which details that this would also include "business associate". Having due regard to the full circumstances, I concluded that in this particular case, the ex-negotiator could be seen as in the category of a business associate.

However, in addition to the Code of Practice I also gave cognisance to the general ethos of the OEA Scheme and what I deemed as fair and reasonable under the circumstances. Given that the buyer was an employee of the Agent who undertook the initial valuation and also entered into the Agency Agreement with the Sellers, I judged it to be fair and reasonable that the Agent should have informed the Sellers and their Solicitors of the full background of the Buyer at the point of offer. I therefore made an Award of compensation to compensate the Complainants for aggravation, distress and inconvenience amounting to £800.

Early Resolutions

In 2007 I have endeavoured to shorten the time in which a resolution is reached, I have adopted a process of early resolution where an initial analysis of the case indicates that a settlement might be achieved through negotiation, through a clearer explanation of each party's stance or where I think that a particular offer might resolve the dispute. This does not deny either party a full review should they wish it. The reason that the analysis is restricted is due to the limited amount of information I have about the case, such as no company file. During the course of 2007 my Office undertook 69% of these case with 96% reaching a satisfactory conclusion.

In a recent case the Complaint was that the Agent advertised the Property as having a private patio, when in fact the patio area was part of the communal area. Included in the documentation that was sent by the Complainant were the Sales Particulars which clearly indicated that the whole of the outside area was communal. The Complainant's solicitor informed the Complainant of the precise details of the Property before he was legally committed to the purchase.. The Complainant then tried to re-negotiate the sale price without success and bought the Property knowing full well that the patio area was not as he wished.

My Office informed the Complainant that he suffered no loss, stress or inconvenience therefore I would probably not support his case; therefore it would be unfruitful for him to pursue the matter further through my Office. From the date we received the Complainant's completed Complaints Form the process took 4 days.

In another case, after completing on her recent purchase the Complainant brought a complaint against the Agent in regards to the white goods that the Complainant thought would be left at the Property by the Sellers. The Agent admitted that for a period of a week the Complainant had not known that her offer which included fitted carpets, curtains and all white goods was accepted except for the white goods. The Complainant had completed the purchase knowing full well that the white goods were not part of the sale.

When the complaint had been made the Agent made a goodwill offer of £250 which was rejected by the Complainant and she brought her complaint to my Office. On reading the documentation that the Complainant had sent in, my Office negotiated with both parties a settlement of £250. Both parties accepted and the process took 10 days.

Letting Complaints

The Complainants were tenants who had a number of issues when their tenancy agreement expired. These issues related to the maintenance work on the property, communication failure and deductions from the deposit.

On reviewing the dispute the evidence showed that the Complainants did have difficulty in getting repairs and maintenance carried out on the property and they consistently had to chase the letting agent. To compound the problem when the maintenance work commenced it was a long time before completion and the letting agent failed to monitor the situation with the Complainants. This does not comply with Paragraph 10b of the Lettings Code of Practice and I recommended that the letting agent reviewed their processes.

With regard to communications there was no dispute that the letting agent did not inform the Complainants that the property had been put on the market without their knowledge. I also noted that the letting agents expected the Complainants to provide access for viewings well before the two months allowed in the tenancy agreement.

With regard to the deductions from the deposit I concluded that the letting agent was correct in making the deductions as they were following their client's (the landlord) instructions in that the rent had not been paid for the last 20 days of the tenancy and the property required additional cleaning when the Complainants left. Proof that cleaning took place was in the letting file.

The letting agent had made a goodwill offer of £125 which the Complainants had refused and referred the dispute to me. The goodwill offer lapsed at that point but I concluded that £125 was a reasonable amount for the distress and inconvenience that occurred and I directed it to be reinstated.

In another case the complaint was that the deposit was not returned in full to the Complainants who were the tenants. It was clear from the evidence presented that it was the landlord's decision to withhold the money from the deposit rather than the letting agent. The letting agent held the deposit as the 'agent for the landlord' and they were obliged to follow the landlord's instructions. However, I concluded that the letting agent did not meet their obligations under the OEA Code of Practice since it appeared that they did not endeavour to see that appropriate documentation, such as invoices or quotations, were provided to the Complainants, to support the amount being claimed.

I concluded that the landlord's decision to retain part of the deposit was not the letting agent's fault and that the only way for this matter to be resolved was for the Complainant to take the landlord to the small claims court. However, I directed that the letting agent review their procedures to ensure that irrespective of how the tenancy deposit had been held they communicate promptly, regularly and fairly. Major pertinent details and recommendations or suggestions should be confirmed in writing and copies of relevant information such as quotes or invoices are provided.

Landlord's Complaint

The Complainants were the landlords and their complaints were that the letting agent treated them unfairly as they returned their property in poor condition, they failed to undertake a full inventory check and that they failed to attach a copy of a restrictive covenant to the tenancy agreement.

On the evidence available to me I was unable to conclude that the letting agent allowed the Complainants property to be returned in a poor condition since it was clear that the Complainants visited the property on a number of occasions prior to the tenant leaving and even took the trouble to write to the tenant with a list of what needed attention. I also noted that bad tenants are an occupational hazard for any landlord and one of the commercial risks they take in letting their property for which they need to make provision.

With regard to the final inspection, the letting agent was not able to gain access to the property as the Complainants' son was already in occupation. The Complainants wrote to the letting agent with a list of missing items for which the letting agent chased the tenant on the Complainants behalf and on receipt delivered them to the Complainants' home. It would appear that all the missing items were returned to the Complainants.

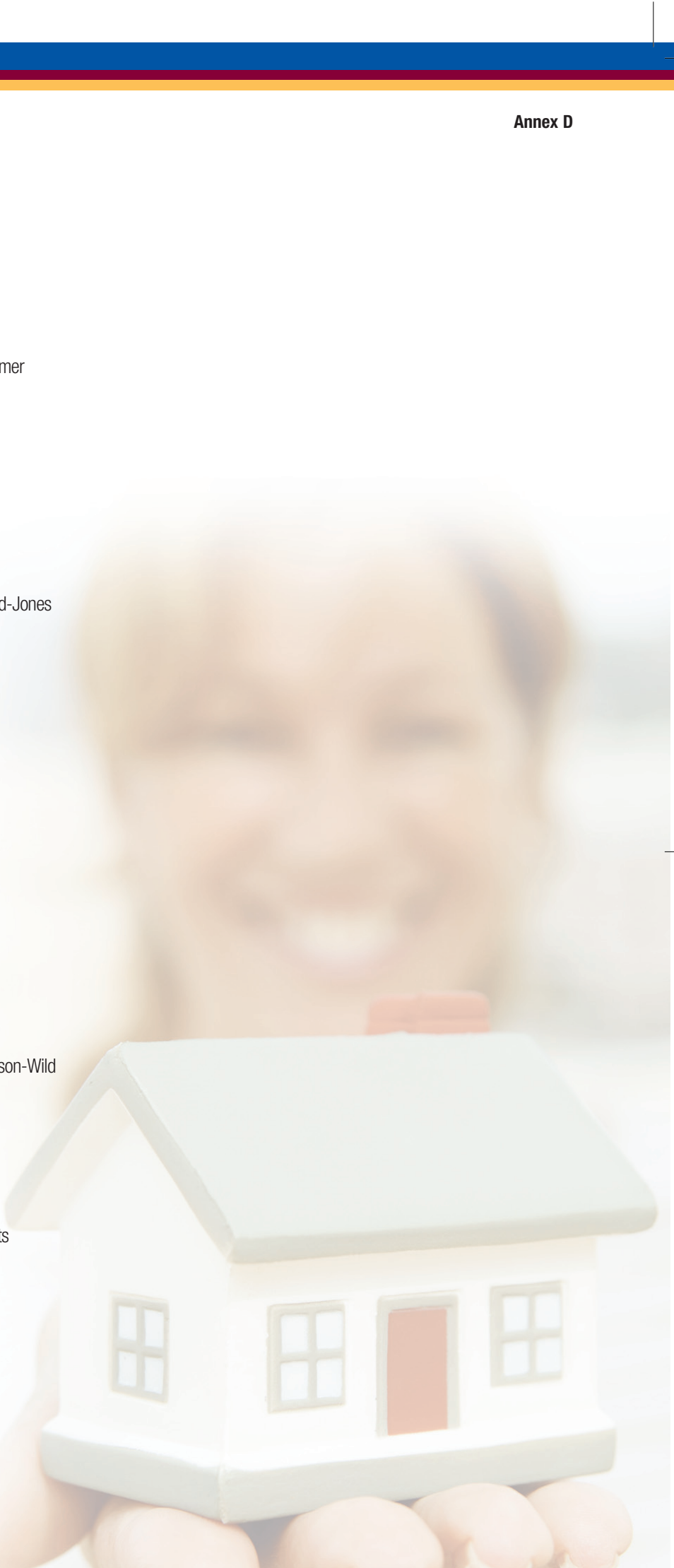
The Complainants were not able to provide any evidence that they informed the letting agent that the covenants had to be attached to the tenancy agreement. The letting agent stated that the Assured Shorthold Tenancy Agreement covered all the terms requested and more. On reading the restricted covenants I concluded that they were not relevant to the tenant and that they were the responsibility of the Complainants as it was about the exterior of the property and joint responsibilities for access ways.

I did not support the complaints made in this dispute.

Staff

as at 31st December 2007

Title	Name
Ombudsman.....	Christopher J Hamer
Case Officers	Mary Birch
	Kate Chandler
	Colin Dixon
	Maria Evans
	Jane Reed
	Joanna Regan
	Christine Rowland-Jones
Finance Manager	Martin Brown
Finance Assistant	Anne Hall
HR Manager	Gail Newell
Initial Enquiries and Facilities Manager	Sue Hurst
Initial Enquiries Supervisor.....	Anya Browne
Initial Enquiries Team	Sarah Andrews
	Natalie Hallett
	Kim Hilton
	Martin Noke
	Susan Russell
	Annemarie Simpson-Wild
Case Administration Manager	Tracey Baldwin
Case Administration Team.....	Joanne Beatty
	Roz Butcher
	Amanda Stiggants
Membership Manager.....	Katy Green
Membership Team	Laura Baldwin
	Vicki Brewis
	Susan Gee
	Sarah Sartin



► Report from the Board

of the OEA Limited

The Role of the Board is to:

- Manage the company affairs (not the office of the Ombudsman).
- Raise sufficient funds from members to meet the budget submitted by Council. The scheme is funded by an annual fee levied on all members.
- Represent the views of members and deal with membership matters.
- Appoint two Board members to serve as Council members.

Membership

The Membership has once again grown significantly during 2007 rising from 2,708 to 5,386, an increase of 99% whilst the number of offices has risen from 7,666 to 12,344, a 61% increase. This is on top of substantial increases for both 2005 and 2006.

During the year the OEA was approved as a Home Information Pack (HIP) Redress Scheme. This has brought an increase in the full membership but in addition there are 459 members with 703 offices that registered as HIP only members.

During the year the remaining members of the National Association of Estate Agents joined for both sales and lettings.

A full list of members can be found on the website or is available on request from the Ombudsman's office.

Sales Offices

These have increased to 10,997. In past years following the OFT review into estate agency it was thought that there were approximately 12,000 offices in the UK but in the light of the number registered with OEA this figure has been revised to 13,000. This means that our Membership now runs at around 85% of UK offices.

OEA continues to support the Consumer Codes Approval Scheme (CCAS) under the auspices of the Office of Fair Trading (OFT) which entitles members to use the joint OEA OFT logo to indicate that they operate to the Code of Practice approved by the OFT. This is an important benefit to members and brings significant consumer protection to buyers and sellers of residential property.

We undertake to review our Code of Practice every three years and therefore towards the end of 2008 we will once again be undertaking this in the light of current practices and the changes brought about in the industry by Government legislation. Key to this during 2008 will be the introduction of the Consumers, Estate Agents and Redress (CEAR) Act 2007 which requires all agents to sign up to an independent redress scheme approved by the OFT. OEA has made its submission and awaits the decision on approval by the OFT.

If OEA is approved all our existing members will be registered automatically to the new scheme as required by statute. Members will have the option only to register with the CEAR scheme but we hope that the vast majority will see the benefits of being full members and take advantage of operating in accordance with the Code of Practice approved by the OFT.

There is an increasing interest in how the residential sales sector should develop and we have submitted our views to Sir Brian Carsberg who is undertaking a review for the NAEA, RICS and ARLA.

The Department for Business, Enterprise and Regulatory Reform (BERR) formally known as the DTI is undertaking its own review into the wider property market and we have attended meetings and given our views. Professor Colin Jones is undertaking a study of Regulation and Redress in the UK Housing Market and once again we have submitted our views and provided information to him. We await his report.

Lettings

This has been a growth area and by the year end 3,748 offices dealing with lettings are in membership. The impact from this increased membership is now beginning to feed through to the number of cases but the incidence of cases per office has not increased.

Currently we continue to sub contract our lettings disputes to The Dispute Service (TDS), however we continue to keep this under review. The Ombudsman has implemented some changes in our procedure so that he has a more direct input to the awards that are made.

Towards the turn of the year The National Approved Letting Scheme (NALS) decided that they would require all their accredited firms to belong to OEA and we are pleased to welcome them. It is estimated that this covers approximately 1,600 offices some of whom are already OEA members. Cases resulting from these members will be dealt with by the Ombudsman and his staff at our Salisbury office. This adds considerably to the numbers of lettings offices within the Scheme and is an important growth area for us.

Scheme Expansion and Redress Recognition

We have had discussions with several other sectors during the year and there may be scope for further expansion of the scheme in to commercial and other sectors.

The property sector has many facets and many bodies most of who deal with specific areas of the market. This means that there are times when it is confusing for consumers to know where they should take their concerns. We are undertaking a study to consider setting up a Property Dispute Action Line so that anyone with a potential dispute related to property but does not know where to direct their concerns can contact the Action Line and be directed to the correct body or department to assist in resolving matters. The Action Line will not resolve disputes, simply assist in directing consumers to the correct body to deal with their concern.

We are currently undertaking a scoping study to assess the size and complexity of the proposal and we will be in discussion with associated bodies to gain their support for this enterprise.

Compliance Monitoring

As in past years we continue to monitor our member agents and the results remain high for both satisfaction and code compliance as seen by sellers and buyers. During the year we have increased our element of mystery shopping to confirm these results and in addition we are trialling a survey of consumers who for one reason or another failed to sell their property or failed to buy the property they wanted. The results of this should be available during the first half of 2008.

We also ask vendors if they would recommend their selling agent to a friend and around 90% report that they would do so. Whilst there has been an increase in awareness of the scheme this is the area in which we need to see further improvement during the year.

The results of our surveys are posted on our web site and the trends are published as part of this Report from the Board.



Extracts from the

► Financial Report

OEA Limited, 31 December 2007

Following pages are extracts from the annual accounts for 2007:

- Officers and professional advisers
- The directors' report
- Independent auditor's report to the members
- Income and expenditure account
- Balance sheet
- Notes to the financial statements

The following pages do not form part of the financial statements:

- Detailed income and expenditure account
- Notes to the detailed income and expenditure account

The board of directors:

J Pridgeon (*resigned 25 April 2007*)
National Association of Estate Agents
Royal Institution of Chartered Surveyors
G R Fitzjohn
D I McKillop
W A McClintock
D J Newnes
Lady J Oakes
P Offley
M Robson
P A Smith
M I Stoop
M N Williams

Company secretary: Richard M Lance

Registered office: Beckett House, 4 Bridge Street, Salisbury, Wiltshire, SP1 2LX

Auditor: Moore Stephens (South) LLP, Chartered Accountants & Registered Auditors, 33 The Clarendon Centre, Salisbury Business Park, Dairy Meadow Lane, Salisbury, Wiltshire, SP1 2TJ

Bankers: Lloyds TSB Bank Plc, Blue Boar Row, Salisbury, Wiltshire

The directors have pleasure in presenting their report and the financial statements of the company for the year ended 31 December 2007.

Principal Activities

The principal activity of the company during the year was that of an ombudsman for estate and letting agents.

Directors Responsibilities

The directors are responsible for preparing the financial statements in accordance with applicable law and United Kingdom Generally Accepted Accounting Practice.

Company law requires the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the surplus or deficiency of the company for that year.

In preparing those financial statements, the directors are required to select suitable accounting policies, as described on page 1, and then apply them on a consistent basis, making judgements and estimates that are prudent and reasonable. The directors must also prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records that disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with the Companies Act 1985. The directors are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

In so far as the directors are aware:

- there is no relevant audit information of which the company's auditors are unaware; and
- the directors have taken all steps that they ought to have taken to make themselves aware of any relevant audit information and to establish that the auditors are aware of that information.

Auditor

A resolution to re-appoint Moore Stephens (South) LLP as auditor for the ensuing year will be proposed at the annual general meeting in accordance with section 385 of the Companies Act 1985.

Small Company Provisions

This report has been prepared in accordance with the special provisions for small companies under Part VII of the Companies Act 1985.

Registered office: Signed on behalf of the directors, Beckett House, 4 Bridge Street, Salisbury, Wiltshire, SP1 2LX



W A McClintock (Director)

Approved by the directors on: 7th February 2008

Independent Auditors Report

To the shareholders of Ombudsman for Estate Agents Company Limited by guarantee.

We have audited the financial statements of The Ombudsman For Estate Agents Company Limited for the year ended 31 December 2007 on page 1 which have been prepared in accordance with the Financial Reporting Standard for Smaller Entities (effective January 2007) and on the basis of the accounting policies set out on page 29.

This report is made solely to the company's members, as a body, in accordance with Section 235 of the Companies Act 1985. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective Responsibilities of Directors and Auditor

As described in the Statement of Directors' Responsibilities the company's directors are responsible for the preparation of the financial statements in accordance with applicable law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice).

Our responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Companies Act 1985 and whether the information given in the Directors' Report is consistent with the financial statements. We also report to you if, in our opinion, the company has not kept proper accounting records, if we have not received all the information and explanations we require for our audit, or if information specified by law regarding directors' remuneration and other transactions is not disclosed.

We read the Directors' Report and consider the implications for our report if we become aware of any apparent misstatements within it.

Basis of Audit Opinion

We conducted our audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

Opinion

In our opinion:

- The financial statements give a true and fair view, in accordance with United Kingdom Generally Accepted Accounting Practice applicable to Smaller Entities, of the state of the company's affairs as at 31 December 2007 and of its profit for the year then ended and have been properly prepared in accordance with the Companies Act 1985; and
- The information given in the Directors' Report is consistent with the financial statements.

Income and Expenditure Account - Year end 31 December 2007

	Note	2007 £	2006 £
CONTRIBUTIONS		1,438,509	806,610
Distribution costs		(12,374)	(4,847)
Administrative expenses		(1,102,808)	(744,833)
OPERATING SURPLUS	2	323,327	56,930
Interest receivable		19,984	11,277
SURPLUS ON ORDINARY ACTIVITIES BEFORE TAXATION		343,311	68,207
Tax on surplus on ordinary activities		(3,948)	(1,689)
SURPLUS FOR THE FINANCIAL YEAR		339,363	66,518
Balance brought forward		183,649	117,131
Balance carried forward		523,012	183,649

Balance Sheet - 31 December 2007

	Note	2007 £	2006 £
FIXED ASSETS			
Tangible assets	3	47,111	21,131
CURRENT ASSETS			
Stocks	4	8,976	
Debtors		106,976	61,686
Cash at bank and in hand		936,718	292,944
		1,052,670	354,630
CREDITORS: Amounts falling due within one year	5	576,769	192,112
NET CURRENT ASSETS		475,901	162,518
TOTAL ASSETS LESS CURRENT LIABILITIES		526,960	185,388
		523,012	183,649
RESERVES	7		
Income and expenditure account		523,012	183,649
MEMBERS' FUNDS		523,012	183,649

These financial statements have been prepared in accordance with the special provisions for small companies under Part VII of the Companies Act 1985 and with the Financial Reporting Standard for Smaller Entities (effective January 2007).

These financial statements were approved by the directors on the 7th February 2008 and are signed on their behalf by:

W A McClintock

W A McCLINTOCK

1. Accounting Policies

Basis of accounting:

The financial statements have been prepared under the historical cost convention and in accordance with the Financial Reporting Standard for Smaller Entities (effective January 2007).

Turnover

The turnover shown in the income and expenditure account represents amounts invoiced during the year, exclusive of Value Added Tax.

Fixed assets

All fixed assets are initially recorded at cost.

Depreciation

Depreciation is calculated so as to write off the cost of an asset, less its estimated residual value, over the useful economic life of that asset as follows:

Computers & Furniture - 33.33% reducing balance basis

Operating lease agreements

Rentals applicable to operating leases where substantially all of the benefits and risks of ownership remain with the lessor are charged against income on a straight line basis over the period of the lease.

Notes to the Financial Statements - Year ended 31 December 2007

2. OPERATING SURPLUS

Operating surplus is stated after charging:

	2007 £	2006 £
Directors' emoluments	51,500	46,876
Depreciation of owned fixed assets	15,884	4,007
Auditor's fees	6,350	2,700

3. TANGIBLE FIXED ASSETS

Computers & Furniture

	£
COST	
At 1 January 2007	42,642
Additions	41,864
Disposals	-
At 31 December 2007	84,506

DEPRECIATION

At 1 January 2007	21,511
Charge for the year	15,884
On disposals	-
At 31 December 2007	37,395

NET BOOK VALUE

At 31 December 2007	47,111
At 31 December 2006	21,131

4. DEBTORS

	2007	2006
	£	£
Trade debtors	78,345	38,056
Other debtors	28,631	23,630
	106,976	61,686

5. CREDITORS Amounts falling due within one year

Trade creditors	27,561	-
Other taxation and social security	27,990	14,995
Other creditors	521,218	177,117
	576,769	192,112

6. COMMITMENTS UNDER OPERATING LEASES

At 31 December 2007 the company had aggregate annual commitments under non-cancellable operating leases as set out below.		
	2007	2006
	£	£
Operating leases which expire:		
Within 1 year	33,755	-
Within 2 to 5 years	3,856	35,404

7. COMPANY LIMITED BY GUARANTEE

The company is limited by guarantee and does not have a share capital. The liability of the members is limited to £1.		
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► Compliance Tables

Satisfaction Buyers & Sellers

Acted professionally at all times
Was friendly and understood my requirements
Showed good local knowledge of local market conditions
Helped in the negotiations between buyers and seller

Satisfaction	2004	2005	2006	2007	Total
Sellers	8.8	8.8	8.9	9.0	8.9
Buyers	8.2	8.4	8.4	8.5	8.4
Grand Total	8.5	8.6	8.7	8.8	8.7

Code Compliance Buyers & Sellers

Sellers	Buyers
OEA Membership	OEA Membership
Business Terms	Continuation of Marketing
Services for buyers	Accurate information
Accuracy of particulars	No conditions
Viewing arrangements	
Offers confirmed	
Continuation of marketing	

Compliance	2004	2005	2006	2007	Total
Sellers	87%	88%	89%	89%	88%
Buyers	79%	82%	82%	82%	81%
Grand Total	84%	86%	86%	86%	85%

Awareness of OEA

'Did the firm make you aware of their membership of the Ombudsman Scheme?'

Awareness	2004	2005	2006	2007	Total
Sellers	74%	77%	77%	78%	77%
Buyers	57%	67%	67%	65%	64%

Would you recommend this firm to friends?

Recommended (2)	2005	2006	2007	Total
Yes	90.7%	90.0%	91.0%	90.5%
No	7.0%	7.5%	6.3%	6.9%
No Response	2.3%	2.6%	2.7%	2.6%
Grand Total	100.0%	100.0%	100.0%	100.0%

