

The Property Ombudsman

2009

ANNUAL REPORT



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The Scheme



The Property Ombudsman (TPO) scheme, formerly the Ombudsman for Estate Agents scheme, in its current form was set up on 1 January 1998. It was originally established in 1990 as the Ombudsman for Corporate Estate Agents providing a facility to buyers and sellers of property being marketed by large corporate agencies, generally at that time, in the ownership of major financial institutions. Now, membership 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, to other independent estate agents who carry the necessary professional indemnity insurance and to lettings agents who qualify under any of the above categories.

TPO provides an independent service for the resolution of disputes between member agents and buyers, sellers, tenants or landlords in relation to residential property in the UK. TPO has authorisation under the Housing Act 2004 as an approved redress scheme covering disputes relating to Home Information Packs and in June 2008 gained the status of an OFT Approved Estate Agents Redress Scheme under the provisions of the Consumers Estate Agents and Redress Act 2007.

The Ombudsman is entirely independent of member agents and reports to a Council which is likewise independent of those agents. The Council appoints the Ombudsman and sets his Terms of Reference.

The Ombudsman provides a fair and impartial resolution of disputes which are referred to him and which fall within his Terms of Reference. Resolutions are designed to achieve a full and final settlement of the dispute and all claims made by either party and the Ombudsman can, where appropriate, make compensatory awards in individual cases up to a maximum of £25,000 for actual and quantifiable loss and / or for aggravation, distress and / or inconvenience caused by the actions of a member agent. The Ombudsman will not normally review a case until the internal complaints procedure of the member agent has been exhausted. No charge is made to complainants for using the service.

TPO has a Code of Practice for Residential Sales which has received OFT approval under its Consumer Codes Approval Scheme and all agents which are full members of the scheme for their sales business are entitled to display the OFT Approved Code logo in branches and on documentation to show that they adhere to the standards laid down in the Code. There is also a Code of Practice for Lettings which contains similar standards for letting agents and OFT approval is being sought.

The Ombudsman's Terms of Reference, the Codes of Practice, Consumer Guides and other documents about the operation of the scheme are available from TPO at the address shown below. They are also available on the TPO website (www.tpos.co.uk) together with previous annual and quarterly reports, an explanation of governance arrangements and a full list of member agents.

Contact details:

The Property Ombudsman
Beckett House, 4 Bridge Street
Salisbury, Wiltshire SP1 2LX

Telephone: 01722 333306 (general enquiries)
Email: admin@tpos.co.uk
membership@tpos.co.uk

Foreword by the Chairman of the Council



The Property Ombudsman's Council exists to ensure the impartiality and independence – from the property industry, from government and from the consumer – that is essential for any Ombudsman service to be effective. With that guarantee of independent judgement, the Ombudsman's decision is final and disputes – sometimes very long running disputes – can be resolved. Those who complain have been able to avoid the costs, the time and the confrontation of taking the matter to the courts. The agent can see a complaint handled fairly and the dispute laid to rest.

Some of those who do not accept the Ombudsman's decision will then wish to complain about the way in which the Ombudsman has handled the matter. In his report the Ombudsman describes the procedure that is followed whereby such complaints will be referred to me. I will only consider whether the correct procedures have been followed. It is not for me to second guess the Ombudsman's decision.

Over recent years, with the dramatic growth of the private rented sector and with lower levels of property sales, the Ombudsman's emphasis has increasingly covered disputes involving managing and letting agents, rather than sales agents. These complaints from the rental sector now account for about half of the TPO's workload and of these around two thirds are complaints by landlords, rather than tenants.

Access to a proper dispute resolution service is a very important ingredient in increasing consumer protection within a sector that has become increasingly significant because of the difficulties facing would-be home owners following the credit crunch.

The Council also, through its Disciplinary and Standards Committee (DSC), reviews cases referred by the Ombudsman, where a complaint that has been upheld is of such significance that some form of disciplinary action, perhaps even expulsion from the TPO's Membership might be required. In cases of expulsion, the Press will need to be notified which can have the effect of naming and shaming the agents concerned. The Council is very grateful to Mary Wilson-Jones who Chairs the DSC.

Over the last year, following the review of the Private Rented Sector by Julie Rugg, government has consulted widely on whether greater regulation of this fragmented industry should be pursued. The view of the TPO is that the current compulsion on sales agents to be part of a redress/ombudsman scheme should apply with equal force to managing and letting agents.

There is little doubt that some letting agents – who have no contact at present with the TPO – are poor performers. And indeed some have been found to be guilty of serious misbehaviour toward tenants and their landlords. We would urge the government to provide the protection for consumers that can come from a requirement for all agents to belong to an Ombudsman scheme to end the unfair competition from rogue agents that undermines good practice by the rest.

I am very grateful to my fellow Council Members and I pay tribute to my predecessor, Lord Borrie, who has proved a very hard act to follow but who generously stayed on the Council for a year after leaving the chair. During the year we were sad to lose from the Council a real consumer champion, Diana Wright who has been a tower of strength to the TPO (and previously the OEA) for nine years. We have been delighted to welcome a new member to the Council, April Stroud, an expert in property law.

I also place on record the appreciation of all Members of the Council for the hard work, wisdom and good judgement of our Ombudsman, Christopher Hamer. Christopher has risen to the challenge of extending our work, most notably into the field of lettings, and handling an extensive and complex workload. We much appreciate his considerate approach, skill and good sense.

Lord Richard Best OBE

Council Members



Lord Richard Best OBE

Lord Best is President of the Local Government Association; 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; Chairman of the All Party Parliamentary Group on Housing and Care for Older People; Treasurer of the All Party Group on Homelessness and Housing Need; Vice President of the Town and Country Planning Association; Chairman of the Private Rented Sector Policy Forum; a Member of the Audit Commission Housing and Regeneration Board; Patron of the Housing Association Charitable Trust; he has previously acted as Chief Executive of the Joseph Rowntree Foundation and as Chief Executive of the Joseph Rowntree Housing Trust. Deputy Chairman, Westminster City Council Standards Committee. Lord Best has been Chairman of the TPO Council since April 2009.

Hilary Bainbridge

Hilary Bainbridge is currently Waterways Ombudsman (dealing with complaints about British Waterways). She also works for other Ombudsmen and regulators as a consultant, and has been an Area Mental Health Act Commissioner. She was previously Deputy Local Government Ombudsman, a Director of Investigations for the Parliamentary and Health Service Ombudsman and Regional Projects Officer for the Audit Commission.

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 Chairman of the International Consortium of Real Estate Associations (ICREA).

Lord Gordon 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 was Chairman of the TPO Council from March 2007 to April 2009. Gordon Borrie was knighted in 1982 and made a Life Peer in 1995.

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 is also chair of the Steering Board of the National Measurement Office and chairs the Board of WCS core group of social care companies. He serves as a Warden (Director) of the Birmingham Assay Office and as a member of the Board of the European Union sponsored EMARS project, 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.

Bill McClintock

Bill McClintock was appointed Chief Operating Officer for The Property Ombudsman Limited (TPO) in January 2003. In addition to that role, he was appointed Chairman of TPO Limited from 1 January 2004. He has been connected with estate agency for 50 years and is a Fellow of the Royal Institution of Chartered Surveyors and a Fellow of The National Association of Estate Agents.

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.

Secretary to the Council:

Frances Hanks

Ombudsman's Report for 2009

Introduction



I started 2009 as the Ombudsman for Estate Agents, but it was felt that this title had increasingly become a misnomer. For the last three years the scheme has offered a dispute resolution service for complaints from landlords and tenants about letting agents as well as our traditional territory of house purchase and sales. Given that we were already in discussions to afford access to a still wider constituency, it seemed a logical step to adopt a title which would more accurately reflect this broader coverage of the property market. With effect from 1 May 2009 the scheme was renamed and I became The Property Ombudsman (TPO).

I had opened last year's report by headlining my growing role in the resolution of disputes arising between consumers and agents in the residential property sector. I had also noted that during 2009 I expected to broaden my jurisdiction by offering the facility of independent consideration of disputes to the customers of a wider range of firms involved in property transactions.

During 2009, therefore, TPO finalised arrangements for the provision of dispute resolution services for members of the Association of Residential Letting Agents (ARLA), Institute of Commercial and Business Transfer Agents (ICBA) and the National Federation of Property Professionals (NFOPP) International Division. I have also continued to provide a service to those firms licensed by the National Approved Letting Scheme (NALS).

I further expanded my jurisdiction to resolving disputes that arise in relation to those Home Information Pack Providers and Personal Search Organisations registered with the Property Codes Compliance Board (PCCB). Under the Housing Act 2004 I have always had jurisdiction in relation to HIP's but only in respect of the obligations placed on estate agents in terms of obtaining the Pack for their clients and in passing it to prospective buyers. However complaints about the actual production and compilation of the Pack need to be directed to the Pack provider and previously if the consumer remained dissatisfied they could ultimately refer the matter to a dispute resolution scheme operated by the Chartered Institute of Arbitrators. Now, any consumer who is dissatisfied with either the agent's actions or the content of the pack (compiled by a PCCB registered firm) has one place to refer their dispute.

The move away from my original title after nearly 20 years (albeit the scheme was originally the Ombudsman for Corporate Estate Agents until 1997) was even more relevant given that the proportion of my workload related to lettings disputes has steadily expanded. The proportion related to sales disputes is now only 51%. Lettings, which accounted for just 28% of workload in 2008, provided the remaining 49%. I believe this trend will continue and in 2010 I forecast that two thirds of all complaints will be on the lettings side. This is partly because there is an increased awareness of the scheme but also because we are attracting a greater number of letting agents who are voluntarily signing up to follow the TPO Code of Practice for Letting and Management Agents. This voluntary basis and the increasing membership is reminiscent of the growth of the (then) OEA pre the Consumers, Estate Agents and Redress Act (CEARA) 2007. Now all estate agents involved in residential sales have to join or register with an Office of Fair Trading (OFT) Approved Redress Scheme. TPO is so approved. Prior to the implementation of that Act in October 2008 membership was indeed voluntary, although we estimated just under 85% had made that positive step and were following the Code of Practice. It meant of course that there were some agents less concerned about the standard of service they offered to consumers by not adhering positively to the requirements of the Code, and by not offering access to my office should a consumer feel disadvantaged by their actions.

I think it is an alarming inconsistency that letting agents were not covered by the provisions of the CEARA legislation and it means that whilst many agents in the lettings business (a total of 2241 companies with 7200 offices) are in TPO membership and have shown that they want to apply high standards in all aspects of their business and afford dissatisfied consumers access to

independent resolution of the matter through the TPO, there are still many firms operating under their own interpretation of what are appropriate standards.

To my mind this needs addressing swiftly and whatever the outcome of the forthcoming General Election, any new government could do well to set about the process of legislating to protect landlords and tenants who use agents. In the meantime my message to any landlord or prospective tenant is to ensure that they use an agent who is a member of a recognised trade association, ARLA, National Association of Estate Agents (NAEA), NALS, whose members are all signed up to TPO, the Royal Institution of Chartered Surveyors or any agent entitled to display the TPO lettings logo in their branch window.

The Report on the Private Rented Sector published last year by Dr Julie Rugg of York University suggested a system of licensing for landlords and agents together with recommending the setting up of a regulatory regime for letting agents. Overall, her research revealed issues which prompted her to suggest a greater degree of control was needed in the sector. Given that the TPO Code of Practice for letting agents provides a comprehensive set of standards by which firms should operate and focus on customer service, I believe that my scheme is already helping to provide this. The more agents that sign up to the Code of Practice and the TPO, the more landlords and tenants will have a greater degree of protection. Similar obligations as the CEAR Act in respect of letting agents being required to have compulsory redress membership could also help bring that about. The government has displayed a commitment in principle to pursuing the aims of licensing and better regulation and I look forward to contributing to the debate.

During 2009, my lettings workload increased 45% over 2008 from 300 cases to 435. Despite that, my overall workload reduced by 15% simply because the number of sales disputes referred to me has declined. A reduction in that workload was perhaps inevitable given the market conditions that have existed over the past year and although there are some positive signs of growth within the residential sales area, as I have said in previous quarterly reports, it will take about four to five months for any resultant increase in my workload to become apparent.

That said I do believe from the cases I see that sales agents are causing less need for sellers and buyers to refer to my

office. Although I was asked to resolve many disputes, 562 last year as opposed to 799 in 2008, many of the issues related to misunderstanding or lack of clear communication between the parties, rather than because of a specific failing by the agent. Every complaint is, of course, serious for the person who feels disadvantaged, but I can detect that the matters being presented to me are mostly less serious. This is, perhaps, manifest by my awards averaging £339 during 2009 as against the 2008 average of £666.

I have many more sales agents in membership than three years ago and I believe that the Sales Code of Practice has played a part in this improvement by providing a platform as to how agents should conduct their business to avoid complaints arising. Whilst figures elsewhere in this report show that I have found against firms in 65% of cases this statistic hides the fact that the complaint might have been supported either wholly or only in certain aspects, many complaints having multiple elements.

“During 2009, my lettings workload increased 45% over 2008 from 300 cases to 435. Despite that, my overall workload reduced by 15% simply because the number of sales disputes referred to me has declined”

As we stand at the moment, the need to develop the approach to customer service, to ‘up the game’ in terms of treatment of customers, is on the lettings side. That might have been the message to sales agents in years gone by although I am not suggesting that they can now rest on their laurels. The necessary cycle of improvement in the lettings sector has not yet, to my mind, reached the stage that sales agents are now at. Time, and most importantly, the signing up to redress and operating in accordance with the Code of Practice will make a significant contribution in that regard.

Given that my workload has two distinct streams, I have in this report separated my more specific remarks, messages and full analysis of statistical data into two distinct disciplines of sales and lettings. The sales section appears on pages 14 - 23 whilst the lettings appears on pages 24 - 31. Both sections contain summaries of cases that represent the sorts of issues that I have been presented with.

Ombudsman's Report for 2009

Workload 2009

Enquiries

The processing of work in my office falls into two main categories. In addition to the formal cases referred to my office, we receive many thousands of enquiries about property disputes. My website contains a lot of information about my Terms of Reference, the Codes, how to pursue a complaint and so on and is intended to ensure that anyone who feels disadvantaged by the actions of an agent can ascertain how they can pursue the matter either through the agent or if need be understand the scope of my jurisdiction. The internet is an accepted and comprehensive tool in all businesses but I suspect without it my enquiry staff would be under even more pressure than they currently experience. During 2009 the website had an average of 30,000 hits per month. That is 100% more than it received two years ago.

During 2009 my office dealt with 12,756 enquiries. Around 22% of these arrive by email, 12% by letter and the rest over the telephone. The total represents a 3% increase on 2008 and whilst a proportion relate to general issues or are not relevant to the property sector, those that relate specifically to matters within my terms of references increased by 6%. In common with my earlier remarks, the most significant element of that increase has been in lettings matters which show a 55% increase on the same figure for 2008. The resource commitment for lettings enquiries is significantly greater than for sales, such enquiries relate to a relationship covering a period of months and even years rather than a one-off transaction and the paperwork to be examined to be able to guide the complainant to the next appropriate stage is often a vast tome. Nonetheless we aim to process every written enquiry within 10 days of receipt.

The statistics relating to enquiries appear at page 11.

"During 2009 the website had an average of 30,000 hits per month. That is 100% more than it received two years ago."

In my Annual Report for 2008 I advised that we now send a short survey document to all those individuals who have contacted my office through the Initial Enquiries Department. The survey is partly to help us establish how the service has been viewed so that we can continue to develop and improve our approach if needed, but also because I am keen to understand what happens to the 78% or so of those who contact my office but

never return to follow up their concerns formally. This study is carried out by Referenceline, an independent survey company, and with the survey's introduction in November 2008 I now have a year's worth of feedback to report. The detail of the study is shown on page 36 but indicates, perhaps unsurprisingly, that the vast majority of enquiries I refer back to the agent for completion of the formal internal complaints handling process are resolved by the agent, although I note that 10% of those who contact me at this point, then, apparently pursued the matters through the courts.

Cases

For 2009 I have already indicated that workload was lower than for 2008, 891 new cases in total being received, split 456 sales/435 lettings. This was 15% lower than my office received in that previous year but still significantly higher than any year prior to the peak in 2008. In total we resolved 1,047 cases, 7% more than 2008, with the effect that we have reduced our waiting time before a case is allocated to a case officer to between just four and five weeks with around three weeks of that time span being the period in which we are seeking and obtaining the branch file and submission from the agent.

Our targets for case resolutions are 60% to be achieved within 90 days and 90% within 120 days. Our current performance is 79% of sales cases resolved with 90 days and 91% within 120 days. Lettings cases figures are 59% with 90 days and 84% within 120 days. The additional resource commitment for lettings cases has had an impact in this regard.

When I have received a case and have decided on the proposed resolution I issue that to the parties (firstly to the party not supported), who are given the opportunity to represent against my findings before I finalise the decision. I will only accept a representation if it produces some new evidence which was not available at the time of the original submission or if I have, for whatever reason, made an error of fact in assessing what is presented to me. 24% of cases are represented against although as many of them, I have to say, are re-iterations of the complaint or dissatisfaction with the level of award, only 20% of those decisions represented against are amended at this stage.

74% of representations come from complainants and on many occasions are submitted in spite of me making an award in the complainant's favour.

The detailed statistics elsewhere in this report contain supplementary information on types of property, selling prices, types of rental agreement, location etc.



The Codes of Practice

The TPO Codes of Practice cover Residential Sales and Lettings and Management. The Code relating to Sales received approval from the OFT under the Consumers Codes Approval Scheme in 2006 and during 2009 that was reviewed in the light of operation and to reflect new legislation. We have submitted those changes to OFT having finalised the amendments after a period of consultation with relevant stakeholders and OFT itself. We await their formal acceptance of the changes so that an updated version of the Code can be issued.

For consistency we have also submitted the Lettings Code to OFT for the full process of approval under that organisation's Consumer Codes Approval Scheme. It will mean that both Codes have independent and credible accreditation. Those agents displaying their commitment to the Codes will also be able to show to the public that they operate according to comprehensive and consumer-oriented standards approved by a branch of government.

“Our targets for case resolutions are 60% to be achieved within 90 days and 90% within 120 days. Our current performance is 79% of sales cases resolved with 90 days and 91% within 120 days”

In judging the actions of an agent which has resulted in a dispute being referred to me, I will often find that an aspect of the Code of Practice has been breached. Frequently these breaches can be considered largely as minor, perhaps an administrative failure on the part of the agent and, provided no serious disadvantaging of the complainant has resulted, I will deal with the matter as part of my review, make a direction, advise on what would be best practice and/or make an award to reflect the aggravation, distress and inconvenience caused to the complainant.

Where I consider that an agent has committed a breach of a more serious nature, where it has clearly been a persistent breach or where I believe there to have been a cultural or systemic failure (which might be leading other consumers to be severely disadvantaged) there is a requirement under the OFT's approval of the Code, for me to instigate disciplinary action. I therefore refer the matter to the Disciplinary and Standards Committee (DSC) of the independent Council to which I report and I step out of the process at that point. Any sanction or other disciplinary action to be taken against the firm is decided upon by that Committee.

During 2009 I referred 14 new cases to the DSC, 12 of which related to lettings disputes and 2 to sales disputes.

For lettings cases the 12 new referrals to the DSC were all in relation to non payment of my awards.

Of these:

- 5 cases were resolved by the firms paying the awards.
- 2 cases involved agents which have closed without trace but the complainants decided to pursue the matter through the courts.
- 1 case involved an agent which had already been suspended from membership and appeared, in any case, to be in compulsory liquidation.
- 2 cases where the DSC decided that the firms should be expelled from the scheme and issued Press Releases publicising that fact.
- 2 are still under deliberation.

4 further cases were carried forward from 2008, 2 of which related to sales disputes and 2 to lettings disputes.

For sales cases the referrals involved:

- 2 cases where my award had not been met. After DSC action 1 case was satisfactorily resolved, the remaining case is still under deliberation with part of the award met.

For lettings cases the referrals involved:

- 2 cases where my award had not been met. After DSC action both cases were satisfactorily resolved without need for sanction.

As part of the OFT approval of the Sales Code, we also have in place a process of monitoring the satisfaction levels of buyers and sellers of firms in membership of the TPO and whether those individuals felt that the agent followed their obligations under the Code. This monitoring is not simply in relation to transactions the subject of complaints to my office but applies to a sample of all transactions which the agent has handled. Again, it is Referenceline which carries out this survey, ensuring full independence and conducting an analysis of responses. The results of this analysis and some key messages from the surveys are reported on pages 41 to 42 with 93% of sellers and 88% of buyers indicating general satisfaction with the service they received from the agent, and 82% of buyers, 89% of sellers reporting that the agents they dealt with were complying with the Code of Practice.

Ombudsman's Report for 2009

Assuming we are ultimately successful in gaining that OFT approval status for the Lettings Code a similar compliance monitoring process will be introduced for letting agents.

Customer Satisfaction

Earlier on in this report I have referred to the survey that we carry out in relation to those individuals who have contacted my office at enquiry stage. That survey has two purposes, to understand what happened to those enquirers after my office has advised them how to pursue the complaint, and to gain some sense of customer satisfaction (or otherwise) with our service at that point.

"93% of sellers and 88% of buyers indicating general satisfaction with the service they received from the agent, and 82% of buyers, 89% of sellers reporting that the agents they dealt with were complying with the Code of Practice"

Over many years we have conducted a satisfaction survey of those individuals who have used my office for formal dispute resolution and this year we introduced a parallel survey for those agents who were 'users' of my service. It means that we have a comprehensive view of how the TPO is perceived by those with whom it has contact and those we are helping. The results of the surveys, again conducted by Referenceline, appear at pages 32 to 36 with the main statistic of particular importance to me being that 78% of complainants surveyed found the procedure for bringing a complaint to my office was easy and 81% finding the explanation and guide from my office was clear and helpful.

Independent Reviewer

For those who express their dissatisfaction with the service received from my office, rather than a disagreement with my decision, there is a process that we follow to answer those concerns. First of all, I will respond to the matters and if I cannot satisfy the individual they have the opportunity to write to the Chairman of the Council. If they remain dissatisfied at this stage then the Chairman will direct the individual to the Independent Reviewer whose report appears on page 38. During 2009 I dealt with 21 such complaints, 11 were referred to the Chairman of the Council of which 6 went on to the Independent Reviewer.

Consumer Understanding

The main aspect of my role is to resolve the disputes that have been referred to me. I also have a responsibility to contribute towards the establishment of best practice in the industry which I do by giving out messages in annual and quarterly reports and by speaking about the work of my office on the issues that I find are causing difficulties with consumers. I also think it behoves me to promote a greater understanding amongst consumers of the process they are about to enter into when they become a buyer, seller, landlord or tenant. From what I see, such individuals have not always equipped themselves with an appropriate level of knowledge about, for example, who is responsible for what in the house buying, selling or renting process and it may be that if they did there would be less misunderstanding and, I think, inevitably less complaints arising. From the consumer protection point of view it is better that disputes do not arise in the first place. Sometimes this lack of understanding leads to much (genuine) upset and aggravation that could have been avoided if the consumer entering into the process had sufficient knowledge to know likely pitfalls and had the ability to question something which to them did not look or feel right.

So, shortly after the release of this report I plan to publish what I will be calling Essential Guides for buyers, sellers, landlords and tenants, with what I hope will be a helpful explanation of who has responsibility for which aspect of the sale or letting transaction and based on my experience of handling disputes over the last three years of the causes of problems and misunderstandings, where there is the potential for miscommunication and what a seller or landlord can expect of their agent.

Closing Remarks

2009 has seen many changes in our workload. There will be further developments in 2010. We have attained high levels of performance during the year under report and we will be looking to maintain that in the coming year. None of this can be achieved without the application and contribution from every member of staff (a list of whom appears on page 37) and their continued ability to cope with everything that comes their way. I cannot thank them enough for their support.

Christopher J Hamer
The Property Ombudsman

General Statistics



Enquiries	2008	2009	% Difference
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1	GENERAL ENQUIRIES				
	From Estate Agents (does not include membership)		520	437	
	From Letting Agents (“)		19	12	
	From the Media		27	7	
	From the Public		590	1135	
	TOTAL		1156	1591	38

2	COMPLAINT ENQUIRIES AGAINST ESTATE AGENTS				
	Complaints against non Member Agents - Sales		1365	526	
	Complaints against non Member Agents - Lettings		1297	1776	
	Complaints against non Member Agents - Not known/Other			236	
	Sub Total 1	2662	2538	-5	
	Complaints against MA OTOR - Sales		593	174	
	Complaints against MA OTOR - Lettings		131	184	
	Complaints against MA OTOR - Not known/Other			267	
	Sub Total 2	724	625	-14	
Complaints against Member Agents Within Terms of Reference - Sales					
	From Complainant who is a Seller		2907	1927	
	From Complainant who is a Buyer		927	1117	
	From Complainant who is a Seller & Buyer		98	54	
	Complainant unwilling to state whether Buyer or Seller		177	96	
	Sub Total 3	4109	3194	-22	
Complaints against Member Agents Within Terms of Reference - Lettings					
	From Complainant who is a Landlord		835	1493	
	From Complainant who is a Tenant		1397	1998	
	Complainant unwilling to state whether Landlord or Tenant		79	100	
	Sub Total 4	2311	3591	55	
	Complaint about MA Sales but non-member Lettings	Sub Total 5	619	476	-23
	Complaint about MA HIP but non-member Sales/Lettings	Sub Total 6	171	3	
	Insufficient info given as to whether Member/Non-Member (A)	Sub Total 7	605	738	22
	Complaints against all Agents	Totals 1-7	11201	11165	0

General Statistics

Cases	2008	2009	% Difference
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3 COMPLAINTS REVIEWED - CASES DEALT WITH IN YEAR				
Workload Sales (1)		743	456	
Workload Lettings		300	435	
TOTAL		1043	891	-15
Productivity:				
Cases Reviewed in Year - Sales (2)		754	571	
Cases Reviewed in Year - Letting		223	476	
	Sub Total 2	977	1047	7
Representations conducted in Year - Sales (3)		186	104	
Representations conducted in Year - Lettings		41	114	
	Sub Total 3	227	218	-4
TOTAL		1204	1265	5

4 CASES CLOSED IN YEAR SALES = OUTCOME (2)		799	562	-30
Description of Complainant				
Seller		547	416	
Buyer		215	130	
Seller & Buyer		36	16	
Other/unknown		1	0	
TOTAL		799	562	-30
Findings:				
Outside Terms of Reference/Not Pursuing		4	4	
Complainant Withdrawal/Complainant & MA resolution/Conciliation		6	9	
Against Complainants (no Award made)		271	199	
MA out of business (not pursuing)		0	2	
	Sub Total 5	281	214	
For Complainants (Award made - Member Agent made NO Offer)		442	308	
For Complainants (Award made - Member Agent made Offer) (4)		76	36	
Conciliation/Comp & MA resolution		0	4	
	Sub Total 6	518	348	
TOTAL	Sub Totals 5-6	799	562	-30
Size of Awards				
£ 1-99		48	85	
£ 100-499		294	208	
£ 500-999		110	36	
£ 1000-2999		48	15	
£ Over 3000		18	4	
TOTAL		518	348	-33
Total value of Awards made				
TOTAL		£345,142.10	£118,073.48	-66



Cases		2008	2009	% Difference
5	CASES CLOSED IN YEAR LETTINGS = OUTCOME (2)	170	490	188
	Description of Complainant			
	Landlord	80	300	
	Tenant	90	190	
	TOTAL	170	490	188
	Findings:			
	Outside Terms of Reference/Not Pursuing	0	2	
	Complainant Withdrawal/Complainant & MA resolution	8	2	
	Against Complainants (no Award made)	47	163	
	Sub Total 5	55	167	
	For Complainants (Award made - Member Agent made NO Offer)	111	298	
	For Complainants (Award made - Member Agent made Offer) (4)	4	19	
	Complainant/MA resolution & conciliation	0	6	
	Sub Total 6	115	323	
	TOTAL	170	490	188
	Size of Awards			
	£ 1-99	30	78	
	£ 100-499	57	164	
	£ 500-999	16	39	
	£ 1000-2999	12	35	
	£ Over 3000	0	7	
	TOTAL	115	323	181
	Total value of Awards made - Lettings			
	TOTAL	£39,895.02	£151,508.89	280
6	CASES CLOSED IN YEAR SALES & LETTINGS	969	1052	9

Messages

Sales

Over the past two years I have, in annual and quarterly reports and in various press articles, detailed certain messages about the common causes of complaint that I am asked to adjudicate on. Whilst I perceive that the industry is indeed understanding and acting on these messages I still see complaints arising on the same subjects. By way of emphasis and update I reiterate those messages below.

Disclosure of Fees

The fees charged to sellers, landlords or tenants are agreed between the parties by virtue of the client signing an Agreement to say that they have read and understood the various terms and conditions laid out. In considering the disputes referred to me my starting point is that I will not rewrite a properly agreed contractual position. However, I am regularly presented with scenarios where the fees, although stated in the Agreement, have been clouded in some way either during substantiated conversations during the market appraisal or through some ambiguity in the wording of the contract.

With regard to sales transactions, paragraph 3m of the TPO Code of Practice requires terms and conditions to be fully explained, and clearly and unambiguously stated in writing. However, I have seen cases where the agent has operated a fixed fee basis but it was clear from the evidence presented to me that the charge was portrayed as a percentage of the selling price and sellers therefore rightly assumed that it related to the achieved sale price. Although the Code of Practice (paragraph 3h) requires a percentage to be shown together with a monetary amount it is clearly only relevant where a sliding fee scale applies. Whilst any charges need to be highlighted, agreements (and any other document referring to terms and conditions) should clearly state that the fee is fixed. The status of the fee should be specifically drawn to the client's attention.

Sales Particulars

All sales particulars must be approved by the vendor at the outset and before the property can be marketed. Failure to do so is a breach of the TPO Code of Practice (paragraph 4l), could ultimately leave an agent open to action under the Property Misdescriptions Act, or at a simple level bring about confusion as to what was actually included in the property sale. Agents should as a matter of course obtain written confirmation that the content of the sales particulars is agreed by the seller. An agent using a sub-agent (as agreed with the seller) must ensure that the sub-agent is also correctly describing the property. Where property details are uploaded to a website or a property portal, agents should always check that the uploaded details are correct and any photographs used relate to the actual property.

Agency Agreements

The precise terms of an agreement must be drawn to the seller's attention before they sign the document. Paragraphs 3e – 3i of the Code of Practice cover an agent's obligations in this regard but it is a legal requirement under the Estate Agents (Provision of Information) Regulations 1991 that the type of agreement must be described fully. I believe that sellers still do not properly understand the important difference between 'sole agency' and 'sole selling rights' and it is therefore essential that the distinction between the two is highlighted. Whilst I will not overturn a contract that has been signed by the seller as being read and understood I will, if a dispute arises, look to establish that there was no misleading explanation of the terms giving rise to the complainant being disadvantaged.

Submission of Offers

Paragraphs 6a and 6b of the Code of Practice specify an agent's obligations in respect of submitting offers to the seller. I have seen a number of disputes where there is some lack of clarity as regards whether an offer was being made, or whether, for example, the prospective buyer was simply considering making an offer of a certain amount: and then whether that offer was accepted conditionally or whether the amount would be acceptable if formally offered. It is the agent's responsibility to establish the 'status' of the offer and then to act accordingly and to make record of his actions.

Deposits and Reservation Fees

Pre-contract deposits should not be taken if the agent has no client account facilities. Where such deposits are taken, a clear form of receipt should be given showing the status of the deposit and when it will be repaid or forfeit. Paragraphs 8a – 8e of the Code of Practice apply. I would also emphasise that even if the deposit is being paid direct to, for example, a builder, it is the agent's responsibility to ensure that the buyer is made fully aware of the terms under which the reservation fee or deposit is being paid. I have noted previously that I think deposits should be held by solicitors and agents should not involve themselves in accepting or holding money for this purpose.

As a general message, it appears to me that many complaints arise through poor communication and misunderstanding. Clarity of documents such as agency agreements or terms of business and explanations given at market appraisal is of utmost importance. It is the agent's job to ensure that the level of service being provided and at what cost is fully disclosed to and understood by the seller.

Supplementary Statistics

Sales



Complaints against member agencies outside terms of reference

Sales	2008	2009
Outside TPO Time Frame	79	31
Letting	47	0
Mortgage Advice	24	8
Survey	20	5
Complaint already dealt with by Court	9	2
Not actual client of MA	60	23
Not Buyer/Seller	56	9
Agent Versus Agent	93	15
Commercial Property	53	4
Building Plot	11	0
Special Terms	2	0
Touting	10	0
Overseas Property	51	6
Other	54	17
Solicitor	12	1
Complaining as a business	12	5
Repossession	0	8
TOTAL	593	134

Representations Completed (Sales)		
No of Representations	186	104
From MA	71 (see Note 1)	25 (see Note 3)
From Complainants	115 (see Note 2)	79 (see Note 4)

Results of Representations

- 33 findings reduced (1 factual error, 29 new info, 3 no new info) and 38 findings unchanged (37 no new info, 1 new info).
- 19 findings increased (2 factual error, 1 no new info, 16 new info), 95 findings unchanged (4 new info, 1 factual error and 90 no new info), 1 reduced (new info following court proceedings).
- 14 findings reduced (5 factual error, 9 new info, 0 no new info) and 11 findings unchanged (10 no new info, 1 new info).
- 1 findings reduced (1 new info, 0 no new info and 0 no factual error) 5 findings increased (2 factual error, 0 no new info, 3 new info), 73 findings unchanged (1 new info, 0 factual error and 72 no new info).

Analysis of Complaint Information

Sales

Value of Property	2009
<£99,999	7%
£100,000-£149,000	21%
£150,000-£199,000	18%
£200,000-£249,000	16%
£250,000-£299,000	12%
£300,00-£349,000	6%
£350,000-£399,000	5%
£400,000-£449,000	3%
£450,000-£499,000	2%
>£500,000	8%
Not identified	2%
TOTAL	555

Property Type	2009
Bungalow detached	5%
Bungalow semi detached	4%
Bungalow terraced	2%
House detached	27%
House semi detached	21%
House terraced	21%
House link detached	0.5%
Maisonette	1%
Flat	15%
Not identified	3%
Park Home	0.5%
TOTAL	588

Agency Agreements	2009
Sole agency	68%
Joint sole agency	4%
Multi agency	6%
Sole selling rights	7%
Buyer – no AA	11%
Not identified	4%

Nature of Complaints

Sales



Cases Formally Reviewed (Sales)	2009
Maladministration	515
Commission Fees	235
Sales Particulars	212
MA Internal Enquiry	180
Viewing	125
HIPS	108
Duty of Care	107
HIPS Fee	79
Initial Valuation	78
Buyers Finances	55
Conflict of Interests	51
Sale Boards	51
Unfair Bias Towards Other Party	49
Communication of Offers - Buyer	48
Communication of Offers-Seller	40
Keys	37
Other	27
Gazumping	12
Deposit	9
EPC	8
Touting	5
Marketing Fees	3
Request for Identification (new since Aug 2004)	2
Other Fees	2
Discrimination:	
Offer of Financial Services	0
Racial	0
Gender	0
Disability	1

Reviews by area % 2009 (2008 figures)

6

SCOTLAND/
NORTHERN
IRELAND [6%]

6

NORTH EAST
[6%]

10

NORTH WEST
[8.5%]

5

YORKSHIRE
[7%]

2

WALES
[3%]

8

WEST MIDLANDS
[9%]

8

EAST MIDLANDS
[4%]

14

EASTERN REGION
[12%]

11

SOUTH WEST
ENGLAND
[9%]

22

SOUTH EAST
ENGLAND
[21.5%]

8

GREATER
LONDON
[14%]

N.B. Figures total more than the number of actual reviews as there will be different elements within one complaint.

Case Summaries

Sales

HIP Fee and Viewings

**The issues that are the subject of this case summary are: -
The HIP fee and viewings.**

The Complainant in this case was a potential seller. In February 2008 she instructed the agent, signing an Agency Agreement and a HIP agreement. Over a nine month period there was no interest in the property, the agent contacting the Complainant on four occasions encouraging her to reduce the price as they felt it was too high. The Complainant declined to do so. In November 2008 the agent submitted their invoice for the HIP fee. The Complainant brought a complaint, maintaining that she was unaware that she would have any liability to pay if the property remained unsold.

The starting point in my consideration of this issue was the HIP agreement, the agent's entitlement to the fee depending entirely upon the terms of their contract with the Complainant. This agreement stated that the fee was due if the property did not proceed to unconditional exchange of contracts for sale within nine months of the date of the HIP agreement. Nine months had passed and the property had not been sold. I therefore supported the agent's entitlement to charge for the HIP fee under their HIP agreement signed by the Complainant; I had no power to re-write its terms.

I next considered whether surrounding events disclosed a failure of the agent to follow the TPO Code such that compensation was merited. The Complainant stated that, irrespective of the terms of the contract, she had not been told when the fee would become due. She was not suggesting that she had been misinformed, but rather that staff did not draw her attention to all circumstances in which she would have to pay, leaving her with the impression that she only had to pay if the property was sold. The agent maintained that their standard procedures would have culminated in the staff member explaining all the fee options and leaving the Complainant with a copy of the agreement. I had no way of deciding what had been said at the point of instruction. I advised the Complainant that if she wished to pursue this aspect of her complaint further then the appropriate way forward was to test the fee claim in court, where she would have the right to call the member of staff in question to give evidence on oath and cross-examine him. I do not have that authority; my role is strictly one of an informal attempt to achieve dispute resolution. I considered the agreement that the Complainant had signed. From a cursory reading of the option that she had ticked it was apparent that there were provisos to the free HIP, namely that she had to sell the Property through the agent and use their solicitors, and that there were fee terms on the reverse which went into this in more detail. I was persuaded that the

Complainant, when she instructed the agent, had the agreement to hand, she could and should have anticipated that there would be a charge and I did not support the complaint.

The Complainant also considered that the agent had exerted undue pressure on her to pay the HIP fee. I consider that an agent is entitled to pursue payment of fees when due, as long as they do not engage in intimidatory tactics. Although I appreciated that the Complainant was upset to receive the HIP invoice, I did not consider that the debt recovery procedures were unreasonable and I did not uphold the complaint.

A further complaint was brought alleging inaccuracies in the HIP report, namely that the thickness of loft insulation had been overstated. Although the Complainant had instructed the agent to prepare the HIP, I did not consider that an agent would be expected to have any knowledge of such an issue and hence the agent was not responsible if the EPC inspector had made an error. I advised the Complainant that if she wanted to take this issue further, she should contact the HIP provider and EPC inspector to complain.

Finally, the Complainant presented the complete lack of viewings as a breach of contract by the agent. I take the view that there is no express or implied contractual obligation to provide viewings. I was not persuaded that the lack of viewings was to blame on the lack of marketing, noting that the Complainant had specifically instructed the agent not to erect a for sale board or advertise in the local press but only to produce sales particulars to hand out to interested parties. Furthermore, the agent had advised reducing the price on four occasions but the Complainant would not authorise this. Whilst extraordinary that no viewings had taken place over nine months, I could not blame this on the lack of effort by the agent, who was constrained by the instructions received from the Complainant. The complaint was not supported.

Marketing

**The issue that is the subject of this case summary is: -
Shortcomings in agent's marketing activity.**

The Complainants had bought the new-build property in November 2007. In June 2008, the agent, who was instructed to sell the next door property, in fact advertised their property in a local paper, including a photograph and brief description. The Complainants telephoned the agent, who wrote to them by return, apologising for the error. They explained that they would make clear on any future marketing material that it was the



neighbouring property that was for sale, by adding the wording “example property previously sold” whenever the photograph was used and undertook to ensure that the error did not occur again.

A fortnight later a similar advertisement was displayed in a local paper, this time bearing the ‘strap line’ as described by the agent. However, the following week the advertisement, minus the ‘strap line’, was published, the photograph used again showed the Property.

Paragraph 4 of the TPO Code of Practice makes clear that an agent must not put any property on the market without permission from the seller. In this case, it was apparent that the agent was marketing the neighbouring property on behalf of the developer. In order to do so, they used photographs of the Complainants’ property, as the neighbouring one was not complete. Arguably, they were marketing the property without the Complainants’ permission.

I criticised the agent for the first advertisement, although I considered that the apology was an appropriate way of dealing with the matter. With regard to the second advertisement, I was satisfied that this caused the Complainants a degree of aggravation, inconvenience and distress, further aggravated by the agent’s complaint handling and communication failures. There had been delays in returning telephone calls regarding the second advertisement and the agent had been lax in advising the Complainants how to bring their complaint to this office. I therefore supported the complaint to the extent that the agent failed to comply with the undertaking given after the first advertisement and failed to communicate with the Complainants to a satisfactory standard.

The Complainants also argued that the agent’s actions affected them financially, as they considered that the property was worth approximately £20,000 more than it had been advertised for, having a larger plot and a superior interior finish. I was not persuaded by their argument and did not consider that the conduct of the agent had caused financial loss. I do not make awards for putative losses as there are too many uncertainties to enable me to conclude with any confidence that the value of the property had been adversely affected.

I made an award of £150 as compensation for the aggravation, distress and inconvenience caused to the Complainants by this episode.

Reposessed Property

**The issues that are the subject of this case summary are: -
Advertising of a reposessed property and submission
of offers.**

The Complainant in this case was the buyer. The property had been reposessed and the agent was selling the property on behalf of the mortgagee in possession. The first complaint related to the fact that the agent had not advertised the property as having been reposessed. The agent informed this Office that their seller client had not requested the property to be so advertised and hence they had not done so. However, the Complainant had been made fully aware, on viewing the property, that the property had been reposessed. There is no obligation upon an agent to advertise a property as having been reposessed and I did not see how this issue may have affected the Complainant in any way. She had been informed that the property had been reposessed; it was then up to her whether to pursue her interest by submitting an offer. I did not support this complaint.

The second complaint related to submission of offers. Five interested buyers, including the Complainant, submitted offers over a two week period. The agent set a deadline date and asked all buyers to submit their offers by that date. However, the Complainant expressed concerns as she considered that, despite her offer being the highest by £4,000 on that date, the agent contacted the other prospective buyers the following day asking them to increase their bids. She had grave concerns as to whether the property had been ‘promised’ to someone else and believed the whole scenario to be unethical and unprofessional.

When considering this case, I made it clear that the seller had a legal duty to the former mortgagor to sell the property for the best price that could reasonably be obtained. Furthermore, the agent had a legal obligation to pass all offers to the seller for consideration. They were also obliged, under paragraph 6e of the TPO Code of Practice, to keep all prospective buyers who had recently made offers through them, and which had not already been rejected, informed of the existence of other offers submitted to the seller.

From an examination of the branch file submitted to me by the agent, I noted that the seller had instructed the agent to contact all interested parties and asked them to submit their best and final offers by a given date. The Complainant was told, at the time that she submitted her offer, that this was the highest and hence she felt that she had successfully purchased the property. However, the agent was waiting to see if another potential buyer

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Sales

could increase her offer; that individual did later that day, to the same amount that the Complainant had offered. Having received two offers of the same amount, the agent was obliged to ask again for best offers. The Complainant's final offer was the highest and she successfully proceeded to buy the property. However, the Complainant had expressed doubt that there were in fact other interested parties submitting offers, querying whether she was in fact bidding against herself. The agent's notes recording each prospective buyer's details and offers were comprehensive and I was entirely satisfied that each and every one of them was a legitimate interested party. I also considered that the agent acted at all times on the instructions of their seller client and treated all those who had expressed an interest in the property fairly. I did not support the complaint.

A further complaint concerned the provision of the HIP. The Complainant requested a copy of this from the agent and was informed that the link would be e-mailed to her. The agent failed to do this. I criticised the agent for failing to provide the information when asked to do so and upheld this element of the complaint, recognising that such failure caused the Complainant aggravation, at a time when she was submitting her offers on the property. I also upheld a complaint relating to poor complaints handling, it having taken the agent two months to respond to the complaints raised rather than in accordance with the timescales set down within paragraph 12 of the TPO Code of Practice.

I made an award of compensation of £100 to the Complainant in respect of those complaints which I had supported.

Fixed Fees

**The issue that is the subject of this case summary is: -
The fixed commission fee.**

The Complainants, two sisters, instructed the agent to sell the property. The Agency Agreement, which had only been signed by one of the sellers, stated that a fixed fee would become payable upon exchange of contracts to a buyer introduced by the agent. Some three months after having been placed on the market, a sale of the property was agreed for £30,000 less than the asking price. The Complainants alleged that they had understood, following discussion during the market appraisal, that a percentage commission fee based on 2% of the actual sale price had been agreed. The Complainants requested that the agent refund the difference between the fixed fee that had been charged and the sum that would have become payable if the invoice had been calculated on 2% of the sale price. The agent denied the allegations and the Complainants had no evidence to support those allegations.

I advised that I could not comment on such verbal allegations. I was not present at the time, I had no knowledge of what may have been discussed between the parties and, having been presented with two different versions, I did not have the authority to take evidence on oath or cross-examine witnesses. The only evidence that I was presented with was the Agency Agreement. This clearly recorded a fixed fee. If the sellers had reached a verbal agreement concerning a percentage commission, I would have expected some note of this on the Agency Agreement, made by either the agent or by one or both of the sellers. There was no amendment or record. I upheld the agent's contractual entitlement to the commission fee.

The Complainants also queried whether both sellers should have signed the Agency Agreement. I confirmed that, even though only signed by one of the sellers, the agreement was a contractual document that was binding on both, the agreement having stated that whoever signed was authorised by all owners of the property to enter into such an agreement.

I held that the member agent had complied with their obligations under the TPO Code of Practice, and in particular had ensured that the fees were clearly set out in the Agency Agreement. I was therefore unable to support the complaint or make an award of compensation.

Fixed Fees

**The issue that is the subject of this case summary is: -
Explanation of the commission fee.**

The Complainant instructed the agent in connection with the sale of the property, signing a Sole Agency Agreement authorising the agent to begin marketing the property at an initial asking price of £750,000. The Agreement noted that a fixed commission fee of £11,370 (plus VAT) would become due in the event of unconditional exchange of contracts with a buyer introduced by the agent. A month later, the Complainant accepted an offer of £650,000. The Complainant advised that, having accepted the offer, he realised that the Agency Agreement did not state that the fee was 1.5% of the sale price, as he had originally understood, but noted a fixed fee. He contacted the agent to discuss this and advised that they reached a verbal agreement that the fee would be reduced to 1.5% of the selling price, with the proviso that if the price achieved was more than £675,000, the higher fee would apply. This proposed sale fell through but another sale was agreed shortly thereafter at the same selling price. During the course of the sale, the sale price was re-negotiated and the sale



exchanged and completed for £605,000. The Complainant understood that he would be invoiced 1.5% of the sale price but in fact received an invoice for the original fixed fee of £11,370. The Complainant brought a complaint to this Office, claiming that the agent should honour the verbal agreement and refund the difference of fees.

I first considered the terms of the Agency Agreement. This clearly stated that a fixed fee of £11,370 (plus VAT) would become payable. The agent acknowledged that during the valuation a commission of 1.5% was discussed and they advised that they would reduce their standard commission fee to a level that represented 1.5% of the asking price. However, they stated that they did not agree to a percentage fee of 1.5%, but merely used that figure as a tool when calculating the fixed fee. I was persuaded that these discussions had added to the confusion and could appreciate why the Complainant may have initially understood that the fee would be percentage based. However, I upheld the agent's contractual entitlement to the commission fee.

The next issue to consider was the verbal discussions. The Complainant stated that, on receiving the offer of £650,000, he discussed the fee with the agent and was advised by them that they would agree to a fee of 1.5% if the property sold for less than £675,000. The Complainant believed that this verbal agreement continued throughout the transaction and therefore applied to the eventual sale. The agent acknowledged that this conversation took place but advised that the fee reduction only applied to the sale that collapsed. There was no record of the conversation on the branch file, for which I criticised the agent.

Having considered all the facts presented to me, I was persuaded that a verbal agreement had been made. The Agent had acknowledged that the conversation had occurred, but had not taken the opportunity to draw up a new agreement in respect of the fee due for the first sale. When they confirmed the second sale, they advised the Complainant that a sale had been agreed "subject to the terms and conditions previously agreed". The letter made no reference to the original Agency Agreement; it was reasonable for the Complainant to understand that this would refer to the verbal discussions. I consider that an agent has an obligation to ensure that the fees are clearly explained; I was not persuaded that the agent in this case had complied with such obligation. I supported the agent's contractual entitlement to the commission fee but I considered that a fair outcome in this case was for the fee to be re-instated at 1.5% of the selling price. In effect I made an award of £2,696.62, being the difference between the fixed fee and a commission fee based on 1.5% of the sale price.

Security of Keys

**The issue that is the subject of this case summary is: -
Key security.**

The Complainant in this case was a seller. She had accepted an offer on the sale of the property and had instructed the agent to remove the property from the market. She was in the property one Sunday morning when she realised that a male was attempting to gain access with a set of keys. She opened the door and was confronted by a man asking her whether it was 'Flat B'. When she confirmed that it was, he told her that he was looking for another flat and continued to try and open the doors of the other properties in the block. When she asked him who he was, he informed her that he was from the agent and was checking keys as they had experienced a problem entering 'Flat D'.

The Complainant was aware that the agent was not marketing any other property in the block and hence contacted them. She stated that the agent advised that the man was not one of their employees and that her keys were in the office. However, two hours later the agent telephoned her to advise that the man did work for a different branch office; he did have the keys but that they did not know why he was at the property. She brought a complaint to this Office as she considered that the agent had failed to handle the keys safely, had failed to follow official viewing protocols, the staff member had lied to her regarding his purpose at the property and that branch staff had further lied regarding the whereabouts of the keys. She added that she had been angry and afraid and that she suspected from the man's suspicious behaviour that his actions were questionable.

The agent had acknowledged that the negotiator's actions were in breach of training and internal policies and stated that he had carried out this unscheduled visit for his own reasons, and that it was a result of poor judgment and inexperience rather than anything sinister. The agent covered the expense of changing the locks and offered a goodwill gesture of £250. The negotiator wrote a letter of apology to the Complainant, stating that he had forgotten to contact her before booking an appointment but that he had intended to view the property with a view to making an application for a tenancy; he had become lost when at the premises and apologised if he had alarmed or misled the Complainant.

The TPO Code of Practice contains strict requirements concerning the security of keys. From an examination of the branch records provided to me by the agent, it was apparent that a staff member from one branch, some miles from the branch that was dealing with the sale of the property, took the keys, failed to complete the necessary paperwork, and then visited the property

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attempting to gain access without authorisation and for his own personal purpose. I was not prepared to speculate as to why the negotiator was trying to gain access to the Complainant's property. I concluded that none of his actions met with either the agent's own procedures as described within their instruction letter or with the obligations within the TPO Code of Practice. This was a very serious complaint, which highlighted the agent's lack of supervision, lack of administrative procedures and failure to adhere to the TPO Code of Practice, and I concluded that the matter would have caused the Complainant a significant degree of distress, aggravation and inconvenience. I did not consider that the goodwill gesture of £250 represented appropriate compensation for the agent's admitted shortcomings in the provision of service. I upheld the complaint and made an award of £500 of compensation.

Commission Fee

The issue that is the subject of this case summary is: -

The agent's entitlement to the commission fee.

The Complainants were selling their property. They had instructed two agents on a multi agency basis. The first agent had arranged a viewing with a potential buyer. A month later the same buyer viewed the property through the second agent, made an offer through that agent and proceeded to purchase the property. Both agents were claiming entitlement to the commission fee, the first agent on the basis that they had introduced the buyer, the second agent as they considered that they had introduced the buyer and then negotiated the sale. The Complainants brought a complaint against the first agent, disputing their entitlement to a commission fee.

The terms of the Agency Agreement that the Complainants had signed were very clear. These stated that the agent was entitled to a commission fee if they introduced a buyer or held negotiations in relation to the property with a buyer, who went on to exchange contracts and complete on the sale of the property.

The first agent's branch file indicated that the buyer had asked a friend to view the property on his behalf. After this viewing, the first agent spoke to the buyer and attempted to negotiate an offer. However, the buyer advised that he was not interested in the property and would not be making an offer. The agent had no further involvement. A month later, for reasons that were not apparent, the buyer decided to re-view the property himself through the second agent. Following that viewing, the buyer made an offer, this was accepted by the Complainants and the sale proceeded through the second agent. The first agent

stated that they considered that they had initially introduced the buyer and as such were contractually entitled to a commission fee, submitting their commission invoice after contracts had exchanged.

I considered that the relevant issue was whether the first agent had introduced the buyer to the purchase of the Property, as this was the basis of the agent's fee entitlement. I was persuaded that a viewing, where no interest had been expressed, and no offer made as a result, was too remote to be considered as an introduction. An introduction should constitute some positive and provable action that directly and effectively led to the buyer's interest in, and hence purchase of, the property. As I determined that there was no such introduction, I held that the first agent was not contractually entitled to their commission fee and instructed them to withdraw the invoice.

Dual Fee

The issues that are the subject of this case summary are: -

The possibility of a dual fee situation and canvassing leaflets.

The Complainants were potential sellers. They signed a Sole Agency Agreement with the agent (the second agent) while still under a Sole Agency Agreement with another agent (the first agent). The second agent introduced a buyer and the Complainants accepted an offer from that buyer, whilst making it clear to the second agent that they were accepting, subject to "the issue of joint commission being resolved". Some three weeks later, realising that both agents intended to claim a commission fee, as they were contractually entitled to do so, the Complainants withdrew from the sale. The Complainants brought a complaint against the second agent, stating that they had never alerted them to the possibility of a dual fee situation.

The Complainants had been induced to approach the second agent, having received three canvassing leaflets. Only one of these leaflets contained any reference to the situation should a seller have instructed a previous agent. The agent acknowledged this failing. I noted that the leaflet stated, in small print at the bottom of the page, that "if you have already instructed another agent on a sole agency basis the terms and conditions of that agreement must be considered". Under paragraph 4m of the TPO Code of Practice, the agent had an obligation to ensure that, if they used such leaflets to seek new properties for sale, a warning about fee liability, including potential dual fee liability on the part of the potential seller, must be included. I did not consider that this general sentence, which merely referred to a previously signed agreement, sufficed to



fulfil this requirement. I would have expected to have seen a clearly worded statement on each of the three leaflets advising that if a seller had previously instructed another agent, they could face the possibility of paying two fees.

Furthermore, it was apparent, from an examination of the second agent's branch file, that the agent was, or should have been, aware that another agent had previously been instructed by the Complainants. Under paragraph 3m of the TPO Code of Practice the second agent had an obligation, at the time of accepting instructions, to point out and clearly explain to the sellers, within the written terms of business, the circumstances in which a dual fee liability may arise. There was no evidence, within the Agency Agreement, that the second agent, against whom the complaint had been brought, had advised, in any way, on the possibility of a dual fee situation, as required under the TPO Code of Practice.

I upheld the complaint, being persuaded that the second agent had failed in their obligations to the Complainants. Had the Complainants been advised of the possibility of such a dual fee situation, in writing, at the start of the matter, they may well have decided on a different course of action. I also upheld a complaint concerning poor complaints handling.

I made an award of compensation of £500 to the Complainants in respect of those complaints which I had supported.

Marketing

The issue that is the subject of this case summary is: - Marketing failures.

The Complainants were sellers. They brought a complaint as they were not satisfied with the way in which the agent had marketed their property. They considered that the agent had failed to exercise proper care and attention when preparing the draft property particulars, stating that there were significant errors in respect of room dimensions, number of radiators, inaccurate descriptions and the fact that agreed photographs had not been included. The Complainants said that they effectively had to rewrite the particulars.

I noted that the point of the consultation process between an agent and a seller is to ensure that the final version of the property particulars is in an accurate format which satisfies the seller and which complies with the provisions of the Property Misdescriptions Act. To uphold any complaint in respect of draft property particulars, I would need to be satisfied that the

first draft had been prepared with little regard for the accuracy of the information contained therein. It was apparent, from the comments made by the Complainants to the agent, that they had wanted a much more descriptive approach used within the particulars. Once the agent was informed of this, the particulars were amended. This was merely personal preference, not an issue in which the agent had failed to act in accordance with their obligations under the TPO Code of Practice. I was not persuaded that the first draft contained any significant errors, save for the fact that the appraiser had incorrectly measured some of the rooms, and these figures were then noted on the particulars, an issue for which I criticised the agent. I supported an element of the complaint as I considered that the agent could have been more accurate in their appraisal of the property, that is in measuring the rooms, and quicker in dealing with the required amendments. However, I also noted that the amendments and delays did not delay the sale of the Property, the buyers having viewed shortly after the particulars were finalised and the sale quickly proceeding to exchange and completion.

A second complaint was made as the Complainants stated that they experienced 'enormous difficulty' in getting the agent to upload the details of the Property onto websites, the agent not uploading the details until five days after they had advised that this would be done. The agent stated that the details should have been uploaded automatically and they were liaising with their IT department to address this issue. They had apologised to the Complainants. Due to the fact that the agent had acknowledged the problems faced and apologised for the same, I did not consider there was any reason for me to comment further and I supported the complaint. It should not have been necessary for the Complainants to have to regularly check to ensure that details had been uploaded.

A final complaint concerning communication failures was also supported. The agent had offered a £100 goodwill gesture in respect of all complaints. I did not consider this to be adequate compensation and I made an award of compensation of £150 to the Complainants in respect of those complaints which I had supported.

Messages

Lettings

Over the past two years I have, in annual and quarterly reports and in various press articles, detailed certain messages about the common causes of complaint that I am asked to adjudicate on. By way of emphasis and update I reiterate those messages below.

Holding Deposits

I see many disputes between tenants and letting agents over holding deposits. The OFT has expressed the view that in certain circumstances the non-refundable nature of such deposits could be unfair. That has not, to my knowledge, been tested in court so I will not rewrite the deposit terms, provided there is no ambiguity over repayment or otherwise. To be fair and to avoid dispute, agents must provide a clear statement of the status of the deposit and the circumstances of forfeiture or repayment.

Referencing

Before a tenancy can be agreed, an agent is required to carry out prudent referencing of prospective tenants. Landlords should be made aware that some agents use a referencing agency to carry out checks and they will be advised whether the prospective tenant is acceptable or otherwise and that the 'clearance' of the tenant is based on information supplied by the referencing agent. Whether an agent carries out the referencing himself or uses an agency, the agent should ensure the landlord is made fully aware of all information that is available about that prospective tenant to enable the landlord to make a decision to go ahead.

Inspection Visits

Where a landlord agrees that the agent will manage the property and carry out inspection visits, the landlord should be informed that these visits may only be cursory and may not identify damage or other untoward happenings. Their frequency should be defined in the management agreement and adhered to and feedback given.

Renewal Fees

The OFT's court action on renewal fees did not determine that such fees were unfair but the action did highlight that burying such a charge within the fine print describing more general terms was considered by the judge to be unacceptable. The court's decision was that such a fee should be clearly shown. My stance has always been that it is best practice that the fee is clearly communicated to the landlord and when the landlord is contacted about renewal of a tenancy he or she should be reminded that a fee (where that is allowed for in the contract) will apply to the renewed tenancy regardless of whether or not the landlord negotiates direct with the tenant. Applying such practice will mean that the landlord should be in no doubt as to his or her liabilities.

As a general message, it appears to me that many complaints arise through poor communication and misunderstanding. Clarity of documents such as management and tenancy agreements and terms of business together with explanations about the commitments and responsibilities that landlords and tenants are taking on are of utmost importance. It is the agent's job to ensure that all parties are fully advised.

Supplementary Statistics

Lettings



Complaints against member agencies outside terms of reference

Lettings	2008	2009
Outside TPO Time Frame	30	60
Complaint already dealt with by Court	10	8
Not actual client of MA	24	32
Agent Versus Agent	7	3
Commercial Property	16	1
Solicitor	1	0
Complaining as a business	13	5
Private Tenant	6	1
Private Landlord	18	5
Guarantor	2	7
Other	4	25
Deposit	0	23
TOTAL	131	170

Representations Completed (Lettings)		
No of Representations	43	114
From MA	13 (see Note 1)	32 (see Note 3)
From Complainants	30 (see Note 2)	82 (see Note 4)

Results of Representations

1. 4 findings reduced (4 new info, 0 no new info) and 9 findings unchanged (9 no new info, 0 new info).
2. 3 findings increased (0 factual error, 0 no new info, 3 new info) and 27 findings unchanged (0 new info, 0 factual error and 27 no new info).
3. 16 findings reduced (0 factual error, 16 new info, 0 no new info) and 15 findings unchanged (15 no new info, 0 new info).
4. 9 findings increased (0 factual error, 0 no new info, 9 new info) and 73 findings unchanged (3 new info, 2 factual error and 68 no new info).

Analysis of Complaint Information

Lettings

Rent (per month)	2009
<£400	7%
£401-£800	42%
£801-£1200	26%
£1201-£1600	9%
£1601-£2000	3%
£2000+	5%
Not identified	6%
Tenancy not began	2%

Type of Property	2009
Bungalow detached	0.5%
Bungalow semi detached	0.5%
House detached	9.5%
House semi detached	11%
House terrace	5%
Maisonette	0.5%
Flat	35%
Not identified	38%

Type of Tenancy Agreement	2009
Periodic Statutory	1%
Shorthold Tenancy	84%
Other	15%

Nature of Complaints

Lettings



Cases Formally Reviewed (Lettings)	2009
Maladministration	451
Management Failure	281
Rent	203
MA Internal Enquiry	178
Duty of Care	141
Deposit	133
Commission Fees	108
Inventory	95
References	79
Keys	71
Tenancy Agreement	46
Lettings Particulars/Advertising	35
Management Agreement	30
Holding Deposit	25
Viewings	20
Conflict of Interest	17
Letting Board	8
Renewal Fees	4
Other	3
Request for Identification (new since Aug 2004)	2
Other Fees	1
Discrimination:	
Offer of Financial Services	0
Racial	4
Gender	0
Disability	2

Reviews by area % 2009 (2008 figures)

2

SCOTLAND/
NORTHERN
IRELAND (1%)

1

NORTH EAST
(0%)

8

NORTH WEST
(7%)

6

YORKSHIRE
(3.5%)

1

WALES
(5%)

9

WEST MIDLANDS
(2.5%)

4

EAST MIDLANDS
(6%)

10

EASTERN REGION
(9.5%)

8

SOUTH WEST
ENGLAND (9.5%)

20

SOUTH EAST
ENGLAND (20%)

31

GREATER
LONDON (36%)

N.B.

Figures total more than the number of actual reviews as there will be different elements within one complaint.

Case Summaries

Lettings

Tenancy Deposit

**The issue that is the subject of this case summary is: -
Treatment of the deposit.**

The two Complainants were tenants. They had rented a property together but, at the end of the term, one had vacated the Property. The second tenant had wished to continue living at the Property and had approached the agent to ask if she could enter into another tenancy agreement with a friend. The friend was referenced and the new agreement set up. However, the agent had simply transferred the deposit from the first tenants over into the names of the second set of tenants. When the second tenants vacated the Property, early by agreement, the incoming second tenant owed significant rental arrears; the landlord was entitled to retain the deposit monies to cover such arrears and hence the Complainants did not receive any refund of the deposit. The Complainants, the first set of tenants, brought a number of complaints, the main issue relating to the treatment of the deposit.

The agent considered that the second tenants' application had provided authority for them to deal with the deposit in such a way. I did not consider this to be the case. There was no written consent on file from the first tenants to authorise such a transfer. The second tenants could not authorise the deposit to be transferred from the first tenancy and the application for the second tenancy certainly did not imply, in any way, such authorisation. The first tenancy ended and a new tenancy commenced with a different pair of tenants. Paragraph 12 of the TPO Code of Practice details, at length, the obligations for an agent to deal with the deposit. I would have expected the agent to have conducted a check out report and returned the deposit to the first tenants, less any agreed deductions, and then ensured a deposit was received from the second tenants. In practice, this would have meant returning the outgoing first tenant's share of the deposit to her while retaining the continuing tenant's half of the deposit monies and collecting deposit monies from the new incoming tenant. The outgoing tenant could not be expected to pay monies to a deposit to secure obligations under a tenancy agreement that she was not party to. By failing to ensure that the deposit was properly administered at the end of the first tenancy, I did not consider that the agent had treated the Complainants fairly and noted that they had failed in their obligations under the TPO Code of Practice. I upheld the complaint.

I concluded that, had the agent treated the deposit in accordance with their obligations, the outgoing first tenant would have received the return of her share, being half of the deposit monies, it having been agreed that, at the end of the first tenancy, there was no damage to the Property. As such, I made an award for actual financial loss equivalent to this sum (£607.50).

Referencing

**The issue that is the subject of this case summary is: -
Duty of care in referencing tenants.**

The Complainant, a landlord, faced rent arrears of £2,400 backed by an unenforceable guarantee. She was dismayed by the condition in which her property was left after the tenants vacated. She brought a complaint, blaming the agent for not identifying that the tenants were likely to find the rent beyond their means and not spotting damage earlier during routine inspections.

I found that credit reference checks carried out by the agent had revealed that the tenants would find it very hard indeed to afford the rent. The agent had not explained this to the Complainant, and this shortcoming had been aggravated by their acceptance of a guarantee letter from the tenants' employer which was legally unenforceable. It was worded in such a way that any letting agent ought to have had misgivings about its effectiveness and recommended their client to get it checked by a solicitor. Moreover they had imprudently concluded the tenancy before obtaining this "guarantee".

The complaint brought against the agent was predicated on the Complainant's belief that the agent was to blame for the tenants' arrears and breaches of the tenancy agreement. There is no such principle in law. I considered what might reasonably be expected of an agent within the context of the TPO Code of Practice. I considered that the agent had failed in their obligations in terms of assessing the financial risks in letting to the tenants and doing what was prudent to minimise that risk in terms of checking that an effective guarantee was in place. The agent had put forward a tenant who did not meet reasonably prudent referencing criteria without additional checks as appropriate, and without explaining the risk assessment to the Complainant. Based on the credit reference checks, the agent's duty to act in their client's best interest dictated not just cautionary warnings, but advice not to let to the tenants as they could not afford the rent. As such, I upheld the complaint.

I accepted that the tenants' financial situation had unexpectedly worsened during the tenancy when one of them was made redundant, and that the agent had carried out character checks which gave no cause to believe that the tenants would mistreat the property. I noted that the agents had recognised some shortcomings for which they had refunded their letting fee (£500) and had only charged commission on the rent received as opposed to the rent due. Taking this advantage to the Complainant into account, I concluded that the agents should further compensate the Complainant and awarded £750. This award was intended to reflect the distress aggravation and



inconvenience caused by the agent's failures to meet standards which could reasonably be expected, but I made no award for financial loss attributable to non-payment of rent or damage to the Property.

Holding Deposit

The issue that is the subject of this case summary is: -
Explanation of the terms of the holding deposit.

The Complainants were potential tenants. They had found a property that they wished to rent but stated that they advised the agent that, being students, they were dependent on parents to some extent for financial backing and were uncertain if this would be forthcoming. They paid a £300 holding deposit for a rented property believing it to be wholly refundable if they changed their minds. Almost immediately after paying the holding deposit, it became clear that one of the Complainants' parents was not prepared to financially assist in renting the Property. When the Complainants asked for the return of the holding deposit, the agent referred to the tenancy application form, signed by the Complainants, which stated that an administration fee would be retained if the applicants changed their mind. The administration fee applicable to the proposed tenancy was stated on the form to be £200 (plus £30 VAT) and the agent refunded just £70 of the £300 paid by the Complainants.

I first explained that I had no power to rewrite the tenancy application agreement signed by the Complainants. The agreement that they had signed stated that the agent could retain an administration fee if the Complainants withdrew from the application although it made no reference as to whether the entire holding deposit was refundable. However, from an examination of the branch file, I was not persuaded that an administration fee had actually been paid by the Complainants. The agreement was specific. It stated that to hold the Property a holding deposit of £300 must be paid but to progress the application for the tenancy, the Complainant were then required to further pay £230 administration fees, together with a deposit and rent advance. The Complainants did not get to the stage of paying these sums, having withdrawn prior.

I could not be sure what had been verbally discussed, but given the Complainants' age and inexperience, I felt that the agent had not done enough to explain that they intended to retain £230 of the deposit if this happened. The agent's responsibilities of fairness, integrity and best practice contained in paragraph 1d of the TPO Code of Practice imposed an obligation upon the agent

to ensure that the Complainants well understood that by reserving the property, they were committing themselves to paying £230 even if they changed their minds. It should have clearly stated on the agreement itself that the holding deposit was only partly refundable and clarified how much would be deducted. As the Complainants had not paid an administration fee I did not support the agent's contractual claim, but I felt that a fair outcome dictated that the Complainants bear some responsibility for the fact they had wasted the landlord's and agent's time by reserving a property without having first determined if they could afford it. No applicant would reasonably expect to get a holding deposit back in full if they simply changed their minds and the Complainants themselves acknowledged this. They had expected the landlord to turn away other applicants and the agent to put effort into their application, whilst they deliberated whether they could rent the Property or not.

In light of this, I upheld the complaint and made an award of compensation of £80, in effect returning half of the sum paid to the Complainants. I considered this to be a fair and reasonable settlement.

Holding Deposit

The issue that is the subject of this case summary is: -
Detailing of the terms of the holding deposit.

The Complainants were potential tenants. They viewed a property, completed a tenancy application form and paid £525 cash to the letting agent. The Complainants stated that they understood that this deposit was for the first month's rent and would be returned when they vacated the property, minus any dilapidations. The agent however, maintained that the £525 was in fact a holding deposit. The Complainants withdrew their application when they ascertained that the Property would not be vacant when the agent had originally intimated, and requested the return of their money. The agent refused, advising that it was a holding deposit and non-refundable in the event that the prospective tenants decided not to go ahead. The Complainants brought a complaint to this Office, requesting the return of the money.

A holding deposit is an agreed sum of money which is paid by the tenant on the understanding that the property is not offered elsewhere, as a way to secure that property. The general rule of thumb surrounding such deposits is that they are non refundable if the tenant pulls out of the transaction. A letting agent will in most circumstances take a holding deposit from a tenant as soon

Case Summaries

Lettings

as the landlord has accepted their offer. If everything proceeds as normal, the deposit is normally set against payments such as the rent. If a tenant changes their mind, or if their references fail to meet the landlord's criteria, then the agent is entitled to keep back all or part of the holding deposit, as a way of covering their administrative expenses. It is also normal, where the letting does not go ahead due to the landlord or agent withdrawing the property, for the holding deposit to be refunded. The Office of Fair Trading is in agreement that, if the tenant withdraws from an agreement, a holding deposit can be used to off-set the landlord's reasonable costs which have been incurred whilst the property is re-let. However, this case was not as straightforward as there were problems with the documentation presented by the agent.

Under paragraph 6f of the TPO Code of Practice, the agent must have set out, in writing, prior to the Complainants' offer being accepted, any significant preconditions including circumstances in which the Complainants may have a potential liability for fees or charges. This includes any fees for the processing of the application and the implications of withdrawal of such an application. The agent had failed to prepare any documentation and there was nothing to suggest that the Complainants were, at any stage, given any written information agreeing conditions under which they would forfeit this money. I took the view that, if the agent takes any monies from a potential tenant which the agent deems to be non-refundable, that the agent should ensure that the appropriate documentation is in being. It was apparent that the agent had failed to meet their obligations in this regard. I considered that the omission to provide any written documentation concerning the terms of the holding deposit severely disadvantaged the Complainants; there was no evidence to suggest that the Complainants understood their position and I was not satisfied that the Complainants were given the opportunity to understand the terms on which their money was taken before such a payment was made. I upheld the complaint and made an award of £555, being the sum of £525 together with a sum to compensate the Complainants as the actions of the agent had deprived the Complainants of a substantial amount of money for a considerable period of time.

Referencing

**The issue that is the subject of this case summary is: -
Agent's representation of the references.**

The Complainant was a landlord. She instructed an agent to find a suitable tenant and to obtain the necessary references. Having procured a tenant, a twelve month tenancy was agreed. Four

months into the tenancy, the police raided the property as illegal activities were taking place. The tenant had vacated, leaving some damage and paying no further rent (the first four months' rent was paid). The Complainant brought a complaint that the agent had failed to undertake suitable references and to check the identity of the tenant. She stated that she had relied on the agent's representation that the references were suitable before she had entered into the tenancy agreement.

The references provided were from two family members and the landlord from the tenant's previous address. I noted that the previous landlord had only provided the rented property address and a mobile number which my Office had tried to ring but the number was unobtainable. The agent did not produce any evidence to show that they validated the authenticity of the references that were provided and did not appear to appreciate that family members cannot be considered to be independent reference providers. No financial references or credit reference checks had been undertaken.

The TPO Code of Practice does not make it compulsory for an agent to use a recognised referencing service provider but it is recommended. Where a provider has not been used then the onus must be on the agent to check thoroughly the references that are used and seek to ensure that the applicant has sufficient funds to pay the rent and, as far as is determinable based on past renting references, return the property to the landlord in its original state. Where an applicant is unable to provide the required documentation, then I expect an agent to advise the landlord of the potential risk involved should the landlord decide to accept the applicant.

In regards to checking the identity of the tenant the agent did take a copy of the tenant's passport which was included in their branch file. However, the tenant held a British National (overseas) Passport. I was concerned to note that the passport expired two months after the commencement date of the tenancy agreement, and as such it was not clear if the tenant had the right to reside in the UK after this date. I note that the Complainant had not been provided with this document either before or after the tenancy finished.

In this case I did not believe that the agent had complied with their obligations under paragraphs 1d or 7 of the TPO Code of Practice. They produced a tenant with little or no relevant references and did not explain the consequences or the potential risk to the Complainant should she accept. Given the limited references that had been obtained, I would have expected to have seen evidence that the agent had informed the Complainant



of the same, and obtained her consent, in writing, to proceed with this applicant. There was no evidence that the Complainant had been informed of any of these issues and hence I upheld the complaint. However, in stating this I did point out to the Complainant that even if the agent had undertaken a more comprehensive referencing service there would have been no guarantees that the house would still not have been used for criminal purposes.

In light of this, I upheld the complaint and made an award of compensation to the Complainant of £900 for the aggravation, distress and inconvenience that she had suffered as a result to the agent's failures. However, I made no award for actual financial losses for loss of rent or damage to the Property. An agent cannot be held accountable for the actions of the tenant; such issues are a risk in any tenancy agreement.

Responsibility for Communal Areas

The issue that is the subject of this case summary is: - A letting agent's responsibility in connection with communal areas.

The Complainant in this case was a tenant. She contacted the letting agent with concerns as she thought that there was asbestos in the communal areas of the block in which she rented a flat. The agent informed her that she must contact the block management company as it was them, and not the letting agent, who were responsible for the communal areas. She stated that she asked the agent to request the block management company provide a copy of the risk assessment on the presence of asbestos but did not receive the same. Some two months later the Complainant received the results of a survey which she had commissioned which showed that the samples that she had provided contained asbestos fibres. She decided to vacate the property before the end of the tenancy agreement and brought a complaint to this Office stating that the agent had failed to take any action to ascertain the safety of the building. After the Complainant had vacated, the agent received a report from the management company which advised that no traces of asbestos had been found.

I advised the Complainant that the advice provided by the agent was correct in that they were not responsible for the communal areas in the block. These were the responsibility of the management company. I would have expected the agent to have communicated promptly with the management company, and liaise between the parties, as they had done, and I could not uphold a complaint that the agent had failed to ensure the safety

of the building. It was also apparent that the agent had attempted to seek the information requested by the Complainant but did not receive the same from the management company until after she had vacated the Property. The complaint was not upheld.

The Complainant was also seeking repayment of the entire rent that she had paid whilst in occupation. I advised that payment of rent is a matter between a tenant and landlord as per the tenancy agreement. This was not an issue which involved the agent; it is only a landlord who can decide if rent should be refunded. Furthermore, the Complainant was also seeking recompense for the cost of the asbestos test that she had undertaken and costs involved in moving to a new property. The agent was not responsible for such costs and no award was made in respect of the same.

I did not find that the agent could be held in any way responsible for the Complainant's dissatisfaction or decision to vacate early, and I was therefore unable to support her complaint or make an award of compensation.

Customer Satisfaction Survey 2009

In common with previous years, we have conducted a survey of customer satisfaction with the service provided by TPO by sending out questionnaires to a sample of complainants who had cases closed in 2009.

All surveys suffer from the bias of excluding the opinions of people who do not respond to the survey. We have therefore looked at response rates compared to the amounts awarded:

Survey Response Rates vs Size of Award	Complainants - 2009	Agents - 2009
Nil	29%	57%
<£100	38%	52%
<£200	43%	52%
<£300	41%	44%
<£400	43%	52%
<£500	41%	54%
<£600	41%	25%
>£600	34%	26%

The table above shows that both parties are least likely to respond to the survey when they are dissatisfied and so the average satisfaction levels reported in the survey are likely to be slightly more positive than the underlying population:

- Over 40% of Complainants usually respond, but less than 30% respond to a Nil award.
- Over 50% of Agents usually respond, but only 25% respond to an award over £500.

The results are analysed from complainants whose cases were closed in the relevant year.

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

Approaching the Ombudsman

This year's results are similar to previous years. Amongst respondents:

48%

are looking for an independent view

55%

feel convinced that the firm's decision is wrong

43%

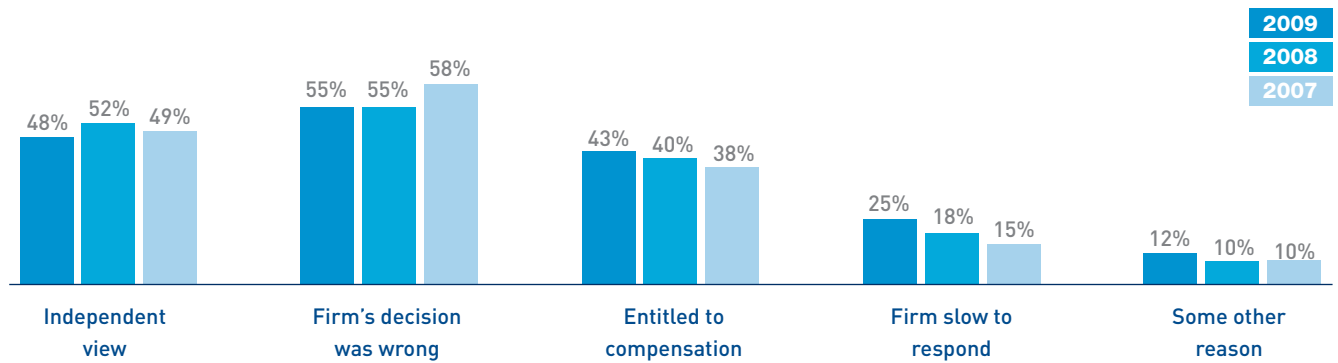
feel entitled to (greater) compensation

25%

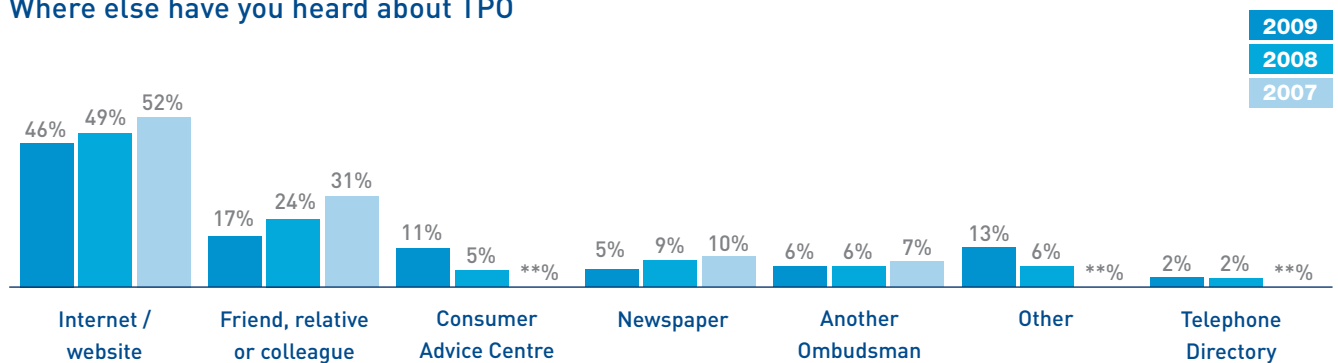
feel that firms are slow to respond



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



Where else have you heard about TPO



**= figures not available for 2007

The internet is by far the main source of awareness for complainants about TPO, accounting for roughly half of all answers. Word of mouth (friends, relatives, and colleagues) and Advice Centres account for most of the rest.

[* New headings were introduced into the survey in September 2008, so the percentages for 2008 are only for part of that year and would otherwise have shown similar figures to those for 2009.]

Customer Satisfaction Survey 2009

Did the Agent clearly explain their membership of TPO & your right to a free independent review

Overall

11%

Yes Very
2008 - 14%

17%

Yes Fairly
2008 - 18%

7%

Not Sure
2008 - 5%

18%

Not Really
2008 - 20%

47%

Not at All
2008 - 43%

Sales

15%

Yes Very
2008 - 15%

19%

Yes Fairly
2008 - 22%

7%

Not Sure
2008 - 5%

19%

Not Really
2008 - 20%

40%

Not at All
2008 - 38%

Lettings

7%

Yes Very
2008 - 9%

14%

Yes Fairly
2008 - 9%

5%

Not Sure
2008 - 7%

15%

Not Really
2008 - 15%

59%

Not at All
2008 - 61%

Only **28%** (32%) of complainants felt that their agent had clearly explained their TPO membership.

The percentages for Lettings **21%** (17%) is much lower than for Sales **34%** (37%)



How do complainants and agents find dealing with TPO?

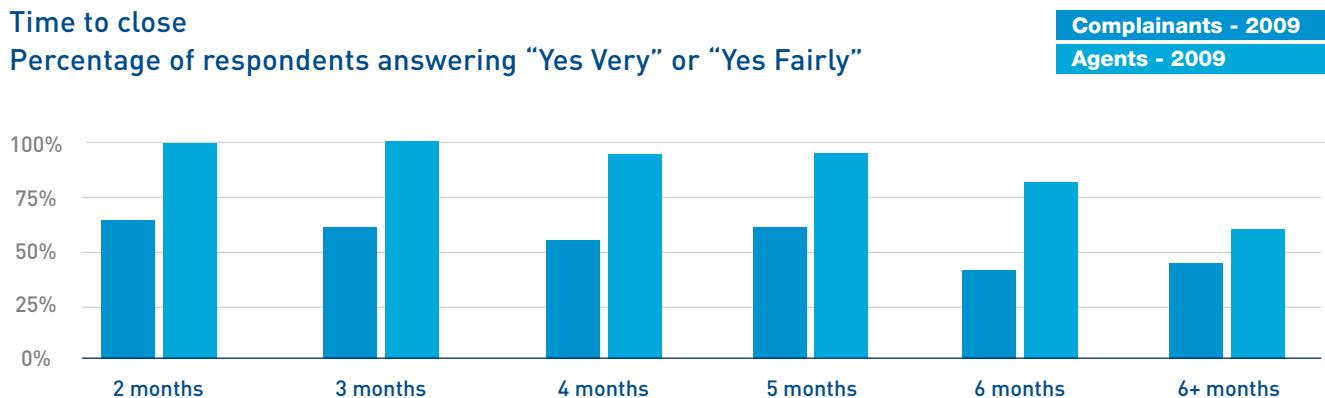
Complainants are asked a number of questions about the administration of their case.

With effect from 2009, agents are now asked the same questions:

THE PROCESS (Percent: “Yes Very or Yes Fairly”)	Complainants 2009 (2008)	Agents 2009
Staff Polite	86% (94%)	96%
Easy to Complain	78% (84%)	96%
Letters Clear	81% (84%)	94%
Explanation Clear	81% (86%)	93%
Guidance Helpful	74% (84%)	91%
Prompt Responses	62% (73%)	86%
Kept Informed	68% (74%)	78%
Time to Resolve	44% (57%)	81%
Overall Process	53% (68%)	89%

Time to close

Percentage of respondents answering “Yes Very” or “Yes Fairly”



This chart shows how Complainants and Agents react to the time taken

Agents (90%+ satisfied) are more patient than Complainants (60%+ satisfied) up to around 5 months

Beyond 5 to 6 months, satisfaction drops off sharply. Complainants’ ratings drop to just over 40% and Agents to 60%.

Customer Satisfaction Survey 2009

Consumer enquiries

What do you think of our service?

Percent : Yes Very / Yes Fairly

63%

Was your call answered promptly?

63%

Were the staff polite, helpful and responsive?

56%

Were you given clear information to answer your questions?

39%

Overall are you satisfied with the TPO service to date?

Survey comments show that many consumers expect TPO to help with enquiries related to any agent and they can be frustrated if TPO is unable to help when the agent is not registered with TPO. This appears to affect the ratings given for “clear information” as well as “overall satisfaction”.

The same issue may also affect the answer to “polite, helpful and responsive”. The survey of complainants (see page 35) shows satisfaction levels of around 80% for the separate questions of “polite” and “helpful”, compared with the 63% recorded above for the question including “responsive”.

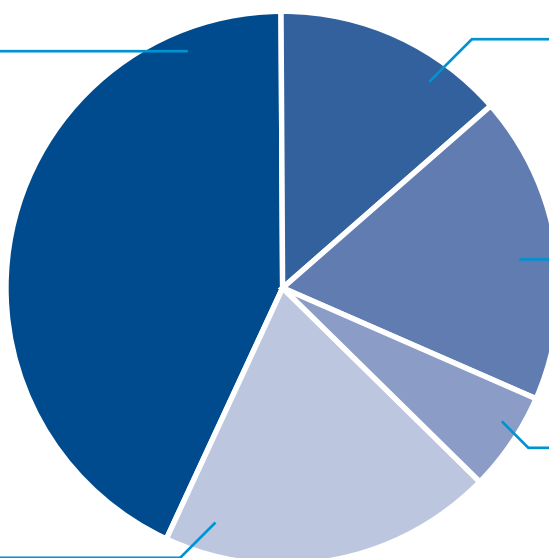
What happened next?

36%

Other

20%

Resolved by the agent



10%

Taking dispute to court

20%

I took no further action

7%

No answer

Roughly 2/3 of answers can be grouped under the general heading of “no answer / no action / other”. Most of the remainder are referred to the agent, but 10% of all respondents indicate that they will be taking the matter to Court.

Staff

As at 31st December 2009



Title	Name
Ombudsman	Christopher J Hamer
P A to Ombudsman	Stephanie Spencer
Finance Manager	Sarah Davies
Finance Assistant	Anne Hall
Support Services Manager	Sue Hurst
Case Officers	Josephine Bailey Kate Chandler (Legal) Colin Dixon Maria Evans Mike Evans Peter Habert Natalie Pughe Jane Reed Christine Rowland-Jones Matthew Tucker
Case Support Manager	Amanda Stiggants
Senior Case Support Officer	Joanne Beatty
Case Support Team	Alan Bowers Roz Butcher Lynn Howlett
Initial Enquiries Manager	Anya Browne
Initial Enquiries Assistant Manager	Kim Hilton
Initial Enquiries Team	Sarah Andrews Martin Noke Anna de Ridder Susan Russell Kimberley Saunders Annemarie Simpson-Wild Kirstie Williams
Membership Manager	Sarah Sartin
Senior Membership Administrator	Emma Harris
Membership Team	Nicola Butcher Jay Johnson Nicole Lake

Independent Reviewer's Report



The TPO has an internal complaints procedure under which a complainant who is dissatisfied with the service may complain formally, in the first instance to the Ombudsman and, if still dissatisfied, then to the Chairman of the Council. My role is to review the standard of service in any case referred to me once this internal procedure has been exhausted. In carrying out my task I am required to, and do, act completely independently of any influence from the TPO. There is no further appeal within the TPO scheme against my decision.

My terms of reference limit my consideration to service complaints or the service aspect of wider complaints. This covers the way complaints have been handled, including the procedures followed, the efficiency of the work of the Office and the conduct of its staff. I am not empowered to give an opinion on the merits of any case considered by the Ombudsman, or on his actual decision, or on any redress he orders.

If I uphold a service complaint I may recommend to the Ombudsman that an apology be made and/or that appropriate compensation be paid (equivalent to that which the TPO would itself award against a firm in similar circumstances) for any damage, distress or inconvenience caused by the shortfall in standard of service given. If my recommendation were not accepted by the Ombudsman - which has not as yet happened - I would refer the matter to the TPO Council. If the Council also declined to comply, it would be required to give its reasons both to the complainant and to me, and to publish them in this Annual Report.

My review procedure is to conduct a detailed study of the TPO case file, concentrating on the standard of service provided to the complainant at each stage of the original complaint handling process and during the service complaint stages. Where necessary, I also interview relevant members of the TPO staff, including the Ombudsman. In my response to the complainant (which I copy to the Ombudsman), I explain my role, review the conduct of the case, respond to the points made in the letter of complaint to me, set out my conclusions and, when I uphold the complaint in whole or part, I make my recommendations to the Ombudsman.

I understand that there were a total of 21 service complaints during the year ended 31 December 2009, 11 of which

progressed to the Chairman of the Council. Six of these remained unresolved and were referred to me (as compared to two in 2008). Two of the six related to sales and four to lettings - three from landlords and one from a tenant. Five were brought by customers of member firms and one by a firm. Interestingly, the Ombudsman had partially supported the complainant in four of the six cases and had made compensatory awards in three.

Notably, in two cases it became apparent on examination that the complaint was actually wholly about the Ombudsman's decision or his decision-making process and in two more the service element was small in relation to the complainant's dissatisfaction with the Ombudsman's decision.

In four cases I found no shortfall in the standard of service given. In one, I supported one part of the complaint and recommended that an apology be made and a small sum be paid as compensation. In the sixth case, knowing that the Ombudsman and the Council are committed to providing the highest standard of service to TPO's customers, I recommended that the Ombudsman should apologise to the complainant for a temporary misunderstanding which arose, even though this occurred as a result of the complainant failing to quote the case reference number when enquiring about the internal complaints procedure. The Ombudsman accepted my recommendations in both these latter two cases and the apologies were made and compensation paid accordingly.

As last year, I believe the small number of cases reaching me is a tribute to the efficiency and effectiveness of the TPO's complaint handling and internal complaints procedures.

Cyril Lanch
Independent Reviewer

Report from the Board

of The Property Ombudsman Limited (TPO) for 2009.



2009 was a year of two halves for sales agents with a difficult first half followed by a recovery albeit that the overall number of residential sales transactions was still at a very low level which lead to a reduction in the total number of sales offices. At the year end the total for sales offices was 10,577, a reduction of 570, whereas the number of letting offices at the year end was 7,276, an increase of more than 2,000.

The scheme finished the year with a total of 7,332 Member firms, up by 1,062, and 13,096 branches giving a total of more than 17,800 jurisdictions for sales and lettings.

Important Scheme changes

The name of the Scheme was changed on 1st May 2009 to The Property Ombudsman to reflect more correctly the work now undertaken by the Ombudsman. During the year, the expansion into lettings accelerated and the scheme added commercial and international to the existing areas of dispute resolution. In addition, disputes arising from HIP providers who are members of the Property Codes Compliance Board were added. We intend also to expand into resolution of block management disputes.

TPO and the Office of Fair Trading

Although the Lettings Code of Practice had been submitted to the OFT in 2008 for approval under their Consumer Codes Approval Scheme to bring about alignment with the approved Sales Code, the approval has not yet been received. We understand that the delay in finalising this approval and agreeing the amendments of the sales code may have come about due to the review of the Home Buying and Selling Process which was released in February 2010 and now that this report is in place I am hopeful that we shall be able to achieve those approvals.

Compliance and Satisfaction Surveys

These have continued throughout the year, undertaken by Referenceline, and the results have been encouraging. Many agents now are using these within their marketing and we have improved the system so that they can see the results as they come through. The overall results are higher than those shown in the OFT Report which themselves are significantly higher than the previous report of four years ago.

Awareness of the TPO continues to increase and the results continue to improve. These are shown in the graphs on pages 41 - 42. Where we have any uncertainty in the monitoring results we undertake mystery shopping by a separate contractor.

Financial Result

The financial results are shown in the accounts attached and continue to indicate a healthy position. As the year was expected to be so difficult, we budgeted to hold the subscriptions and with the expectation that our number of members would reduce we had budgeted for a negative result. In the event, the numbers held up better than expected and I am pleased to report a positive surplus with Shareholders funds of £1,028,741 (net current assets £968,399). Some of these funds are reserved for known expenses in 2010/2011 and the Board considers it prudent to hold a balance in case of unforeseen circumstances which might impact financially on TPO.

Premises and Systems

Our premises in Salisbury have served us well for 20 years but we have been operating at full capacity for several years. We had planned to relocate within the City in 2008 but in the light of trading conditions of our members, the Ombudsman, Council and Board all agreed to postpone any move. However with the expanded coverage and with no meeting, waiting or interview room the time has come to reactivate the search for more efficient premises. Similarly we need to update our management systems in order to ensure accurate and timely records and reporting.

Finally

I pay tribute and thank the Ombudsman and his staff as well as my own staff for bringing us through a difficult year. I would also like to thank the Board and Council for their advice and support in making the Scheme successful.

Lastly credit and thanks to our Members who have traded through what is for most of them the worst recession of their lifetime. They have shown the ability to adapt and survive and, I hope, to now move forward with confidence.

W A McClintock
Board Chairman

Financial Report

of The Property Ombudsman Limited (TPO)

Extract from the Accounts The Property Ombudsman - A Company Limited by Guarantee

Profit and Loss Account for the year ended 31 December 2009

	2009 £	2008 £
Turnover	1,707,816	1,723,377
Cost of Sales	(6,319)	(4,672)
Gross surplus	1,701,497	1,718,705
Administrative expenses	(1,489,353)	(1,496,243)
Operating surplus	212,144	222,462
Other interest receivable and similar income	24,151	65,672
Surplus on ordinary activities before taxation	236,295	288,134
Tax on surplus on ordinary activities	(5,100)	(13,600)
Total incoming resources	231,195	274,534

Balance Sheet at 31 December 2009

	2009 £	2008 £
Fixed assets		
Tangible fixed assets	60,334	56,831
Investments	8	-
	60,342	56,831
Current assets		
Stocks	8,577	7,921
Debtors	117,440	125,850
Cash at bank	1,621,673	1,283,776
	1,747,690	1,417,547
Creditors amounts falling due within one year	(779,291)	(676,832)
Net Current assets	968,399	740,715
TOTAL NET ASSETS	1,028,741	797,546
Capital and reserves		
Retained reserves	1,028,741	797,546
Members' funds	1,028,741	797,546

Approved for and on behalf of the Board 10 March 2010, **W A McClintock - Director**

Summary of accounts:

These summarised accounts may not contain sufficient information to allow for a full understanding of the financial affairs of the Company. For further information, the full accounts, including the unqualified auditor's report on those accounts and the Directors' Annual Report, should be consulted. Copies of these can be obtained from: The Property Ombudsman, Beckett House, 4 Bridge Street, Salisbury, Wiltshire, SP1 2LX

Auditor's Statement

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

Moore Stephens (South) LLP

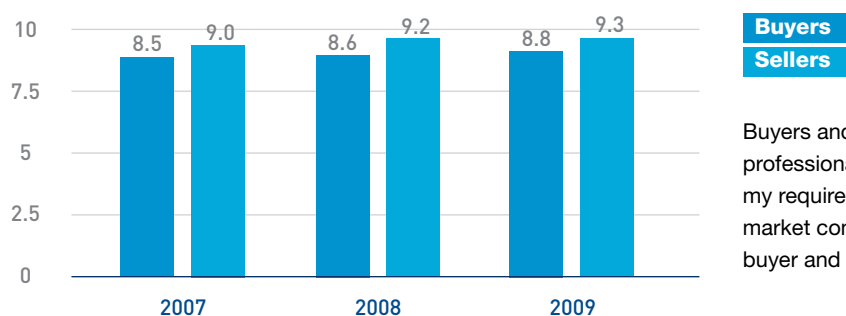
Date of approval of the full accounts 10 March 2010

Compliance Tables



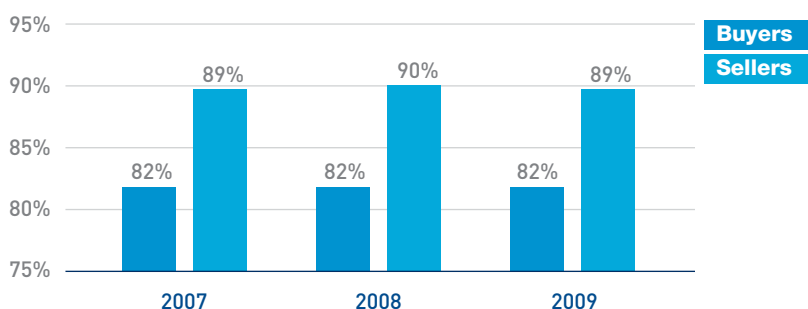
Agent Surveys for the OFT-Approved Code

Satisfaction (ratings out of 10)



Buyers and Sellers are asked if the firm (1) Acted professionally at all times (2) Was friendly and understood my requirements (3) Showed a good knowledge of local market conditions (4) Helped in the negotiations between buyer and seller. Ratings continued to improve in 2009.

Code compliance



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

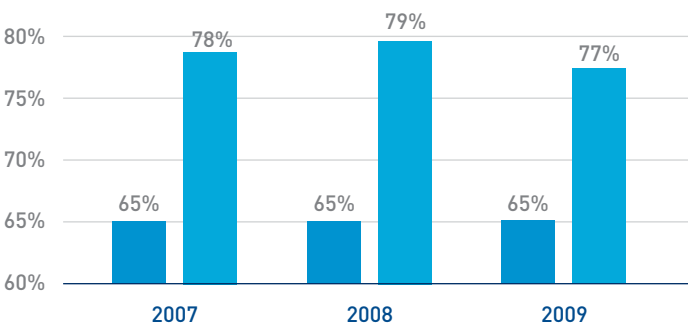
Sellers are asked: Did the firm (1) Make you aware of their membership of the Ombudsman scheme? (2) Clearly explain their fees, expenses and business terms and confirm this in writing before marketing your property? (3) Make clear whether or not they wish to offer other services (such as mortgages) to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

Results are consistent with previous years.

Compliance Tables



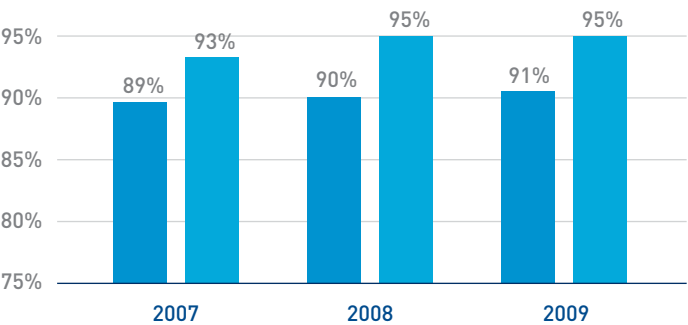
Awareness of TPO



Buyers
Sellers

As noted here, both buyers and sellers are asked whether the firm made them aware of their membership of the Ombudsman scheme. The results have been consistent from year to year, with Buyers less likely to remember having been told.

Recommended



Buyers
Sellers

Buyers and Sellers are asked if they would recommend the firm to friends. Sellers are slightly more likely to do so.



The Property Ombudsman

Beckett House, 4 Bridge Street, Salisbury, Wiltshire SP1 2LX

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