

The Property Ombudsman

2010

ANNUAL REPORT



Contents



- 3. The Scheme
- 4. Foreword by the Chairman of the Council
- 5. Ombudsman's Report for 2010
- 10. General Statistics

SALES

- 13. Complaint Information
- 14. Messages
- 15. Case Summaries

LETTINGS

- 20. Complaint Information
- 21. Messages
- 22. Case Summaries

- 27. Customer Satisfaction Survey 2010
- 31. Staff
- 32. Council Members
- 33. Independent Reviewer's Report
- 34. Report from the Board of TPO Limited
- 36. Financial Report
- 37. Compliance Tables
- 39. Essential Guides

The Scheme



The Property Ombudsman (TPO) scheme was originally established in 1990 as the Ombudsman for Corporate Estate Agents providing a dispute resolution facility for buyers and sellers of property being marketed by large corporate agencies, generally at that time, in the ownership of major financial institutions.

That scheme was renamed as the Ombudsman for Estate Agents with membership becoming open to all those firms with a principal, director or partner being 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 carried the necessary professional indemnity insurance and to lettings agents who qualified under any of the above categories. In May 2009 the scheme changed its name to The Property Ombudsman (TPO) to reflect its broader jurisdiction in relation to the resolution of sales, lettings, Home Information Pack providers, residential leasehold management and commercial disputes.

In June 2008 TPO 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 is accountable 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 sponsors 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 interim reports, an explanation of governance arrangements and a full list of member agents.

Contact details:

The Property Ombudsman
Milford House
43-55 Milford Street
Salisbury
Wiltshire
SP1 2BP

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

Note new address from 7th April 2011

Foreword by the Chairman of the Council

In my Chair's Foreword last year I noted the shift in emphasis for the work of The Property Ombudsman from handling complaints against sales/estate agents to dealing with complaints against managing/letting agents. Unsurprisingly, at a time when property sales have been at a low ebb and more people have moved into rented accommodation, this year too has seen more work for the Ombudsman service in relation to the rental sector.

Resolving disputes in the Private Rented Sector (PRS) is very often more complex and time consuming than has been the case for property sales. Unlike the one-off transaction of a property sale, in the rental market disputes can be on-going and new issues can emerge during the course of an investigation. But it is particularly important for matters to be resolved where the two parties – particularly where a tenant is complaining about a managing agent – are likely to continue in a business relationship for some time to come. However difficult, the Ombudsman's role in settling disputes is an important component in supporting the consumer in the PRS.

Last year, I extolled the virtues of the redress arrangements for sales/estate agents and called for an extension of this regulation to cover managing/letting agents. In the wake of the review of the PRS by Julie Rugg, the moment seemed right to make it compulsory for managing/letting agents to belong to an ombudsman scheme to give protection and reassurance to both tenants and landlords, and agents.

The new coalition government has made it clear that it is not in favour of regulation for the PRS and, for the moment, this issue is off the agenda. The Housing Minister, Grant Shapps, has encouraged voluntary action by the industry itself and has praised the steps taken in this direction by the National Federation of Property Professionals (embracing the National Association of Estate Agents and the Association of Residential Letting Agents). The TPO Council is hopeful that further progress can now be made, with Ministerial support, toward an industry-wide agreed Code of Practice for all managing/letting agents.

The TPO Council has been working with the Office of Fair Trading to update its approved Code for Sales and to gain OFT approval for its Lettings Code. Because the Ombudsman will make his judgements on the basis of the good practice set out in these Codes, they are an important component in maintaining high standards amongst property professionals. And as part of the efforts to advance industry-led self-regulation, in the future we would hope to see pressure on all agents to take out Client Money Protection insurance, (as is the case for all those in the National Approved Lettings Scheme (NALS) which leads the way).

Meanwhile we remain concerned about those who operate outside of any redress scheme and, therefore, have not agreed to abide by any Code. Press reports have highlighted the problems of "fly by night" managing/letting agents who have absconded with tenants' deposits and rents.

The TPO Council recognises that Trading Standards Officers sometimes do not have the resources to take action against those agents who appear to guilty of serious misbehaviour.

Within these constraints, the role of the Ombudsman will not be easy in the year ahead. But the TPO Council has complete confidence in the independence and good judgement of Christopher Hamer, the Ombudsman. And the Council also wants to place on record its appreciation of the work of Mary Wilson-Jones in chairing our Disciplinary and Standards Committee to such good effect. For my part, I must offer sincere thanks to my fellow Council Members for their dedication and hard work.

Lord Richard Best OBE

Ombudsman's Report for 2010

Introduction



This report covering the year's work of The Property Ombudsman (TPO) scheme continues to discuss and expand those themes that I both identified in my previous annual report for 2009 and which I have referred to in public statements and interim reports throughout 2010.

In particular I highlighted in my 2009 Annual Report that there is an inconsistency in the legislative environment applied to letting agents against that in the sales sector. For letting agents there is no equivalent of the Estate Agents Act, the various related Regulations or Property Misdescriptions Act. Most critically, in my view, there is no obligation under the Consumers, Estate Agents and Redress Act (CEARA) 2007 for letting agents to be members of a redress scheme. Nearly 8,000 lettings offices have voluntarily joined TPO, have agreed to follow the Code of Practice and can offer landlords or tenants access to independent dispute resolution where that is needed. Without legislation to make independent redress compulsory, consumers are left at risk from less reputable agents in an area where there are many legal responsibilities, for example, on landlords in relation to health and safety, and where significant sums of money are involved.

Before the General Election in May, 2010, I suggested that the new government should consider this inconsistency as a priority. The coalition government however has made it very clear that any form of legislation to bring about regulation, or at the very least compulsory redress, in the lettings sector was not going to be a matter for its attention. I remain firmly of the view that this is a missed opportunity to give tenants and landlords increased protection and although I recognise the government has other pressing priorities for its resources I am concerned that at least the compulsory redress element has not been addressed. I feel that this could be achieved through a simple amendment to the Estate Agents Act 1979 to bring lettings of property within the definition of what constitutes 'estate agency' with the consequence that CEARA obligations would then apply to all sales and lettings firms.

Some form of regulation for letting agents appears to have general support within the industry and amongst industry bodies. For the industry it sets a level playing field in terms of fair competition and standards and for the consumer it means consistent treatment and common standards within an environment of choice over fees and type of service offered. Full industry regulation can only be gained through legislation which, as I have already noted, is unlikely. Consistency across the

industry can be achieved nonetheless by the various stakeholders working together to agree an approach for a system of voluntary regulation, a common Code of Practice (which is already compiled, in use and being followed by the firms in membership of TPO), enforcement of compliance and a rigorous approach to the protection of clients' money.

For any landlord, particularly those who are perhaps letting their own property because of financial distress or are simply buying to let as a way of earning a return on their investments, the prompt payment of rents collected by agents from tenants is of utmost importance. Non payment of rents received by the agent because that agent is operating on the edge of viability and is using client money to bolster the business, or more worrying still using the money for personal enjoyment, is entirely unacceptable and against the law. There can be no excuse for client money not being held in separate and properly audited client accounts such that it is less easy for unscrupulous agents to misappropriate it. Furthermore, there needs to be an obligation that such monies are protected by suitable client money insurance. An appropriate regulatory regime could ensure that the necessary separation of client and business money is enforced.

"An increasing number of lettings agents are signing up to TPO membership - and those firms that have taken that option should be applauded"

I have had cause to deal with one letting agent (now out of business) where rent was collected and simply not passed on to landlords. Although my role was restricted in terms of the action I could take, I was greatly concerned given that I had received 14 formal referrals and knew of at least another 50 landlords who had contacted my Initial Enquiries team with their concerns. In these extreme circumstances I approached the agent's local Trading Standards Office to take enforcement action to stop what was systemic misappropriation of client funds. Eventually

Ombudsman's Report for 2010

a continuation of my pressure and that of the complainants' action group, Trading Standards and the police, brought the matter to some sort of finality. The point here is that a formalised regulatory regime could have a compliance monitoring function which may have avoided the situation arising, but also if it had, would then have allocated responsibility for swift investigation and action against that firm.

"For each of the different areas of my jurisdiction I measure the actions of the agent against legal principles, what is fair and reasonable in the circumstances and most particularly against the relevant Code of Practice"

I intend during 2011 to continue involving myself in, and contributing to, the debate about regulation, voluntary or otherwise, and how the future landscape might look.

On the same theme and based on the disputes being referred to me, I have explained that the need for improvement in standards lies very much in the lettings business. An increasing number of lettings agents are signing up to TPO membership (as indicated above this remains a voluntary basis for them) and those firms that have taken that option should be applauded. Firms already in membership are becoming used to operating under the principles of the Code but I see this as 'work in progress' in this regard. Of complainants who come to me because they feel disadvantaged by a letting agent, 67% are supported either wholly or in part because of some failing or shortcoming by the agent. Contrast that with sales agents who it would appear are now well used to operating within the framework of a Code of Practice. In 2010 I found in favour of 50% of those complainants that referred sales disputes to me. In previous years that proportion had been much higher and it is therefore clear evidence that the presence of, and adherence to, the Code of Practice has brought about higher standards within the industry. It does not substitute for a full regulatory regime but the Code of Practice has clearly, over time, improved standards to the benefit of the consumer. The more lettings agents therefore that sign up the more standards in that industry will improve, regardless of whether formal regulation or voluntary regulation is set in place. The sales sector has room for still greater improvement, of course, but the growing impact of the Code is further borne out by my average award to compensate complainants for the agent's actions for sales in 2010 being £258 when in 2007 it was £547, an indicator that the gravity of complaints is diminished.

During 2010 and again continuing the theme of standard setting in the lettings sector, I have been contributing to a small industry group looking to establish some accreditation mechanism and Code of Practice for referencing agents who conduct the referencing on behalf of letting agents. Many letting agents do not carry out their own referencing of prospective tenants but purchase the services of a specialist referencing agent. For the consumer, the prospective tenant or the landlord, they will be under the impression that only the letting agent is involved in the transaction and any issues that give rise to a dispute or complaint are for that letting agent to resolve. However, again based on my experience of disputes referred to me, it would appear the consumer does not realise that part of the process is often carried out by another entity and that the letting agent is not necessarily responsible for part of the service offered to them.

I have seen numerous cases where the reference obtained is disputed in some way by either the tenant, but more usually the landlord, who considers that if the referencing had been carried out with proper diligence he would not have lost rent, or his property would not have been damaged as a result of a bad tenant. I recognise that referencing will not necessarily identify the non-payer of rent or, for example, the cannabis farmer and I do explain that to complainants. However if they are genuinely aggrieved about the referencing process, and assuming the lettings agent has properly communicated the result of referencing, then I simply have to advise the complainant that the referencing process is outside my jurisdiction and they must approach the referencing agent themselves. The driving force behind putting some structure to dispute resolution and accreditation in this field is so that there are clear standards which the consumer can expect and recourse to redress if a dispute arises and cannot be resolved by complainant and referencing agent themselves. It is a step towards the consumer having enhanced protection for every element of the transaction and for the industry (in terms of referencing agents) offering a consistent level of service to its customers. If this forum is successful (and a number of large referencing firms have been positive about it) it will ensure that a transparent approach to referencing exists. Ultimately letting agents might be encouraged to use only accredited referencing agents further lessening the opportunity for consumer detriment.

Jurisdiction

In my previous Annual Report I advised that my jurisdiction had expanded in a number of areas and specifically such that I could accept the referral to me of disputes relating to the services of Home Information Pack providers and search firms registered with the Property Codes Compliance Board (PCCB). As it turned out the coalition government carried out a previously announced



intention and scrapped HIPs. I will still have jurisdiction to consider disputes about personal searches but in truth HIP provider complaints had not been the source of many disputes being referred to me (nine during 2010). The government decision will therefore have little impact on my workload.

During 2010 my jurisdiction was extended to:

- Residential Leasehold Management. A number of members of the Association of Residential Managing Agents (ARMA) are members of TPO for their sales and lettings business. Now that ARMA has required all its own members to be able to provide a redress facility for leaseholders and lessees of managed blocks, it was a logical step to be able to include this aspect within my jurisdiction.
- Chattels. As part of my original jurisdiction I have been resolving disputes relating to sales of property through auctions, but now my jurisdiction extends into the much wider area of sales and transactions conducted under the relevant Auctions legislation by members of the National Association of Valuers and Auctioneers (a constituent body of the National Federation of Property Professionals). Whilst at the time of writing this has to be fully finalised, there is an element of consistency of approach in that all auctions are now within my jurisdiction. It is not expected that this will create a significant number of cases and it is important to emphasise that I will not be looking at claims by an individual claiming that they paid a certain amount for an item which was far in excess of its value but rather only at 'service' issues such as disclosure of fees, premiums and description of items.

Codes of Practice

For each of the different areas of my jurisdiction I measure the actions of the agent against legal principles, what is fair and reasonable in the circumstances and most particularly against the relevant Code of Practice. In terms of property search firms I use the Search Code compiled by that industry and overseen by the PCCB. For commercial disputes and for chattels disputes I have, in consultation with NFOPP, adapted and developed their own Codes of Practice to include the standards of operation that should apply to the relevant firms dealing with my office and generally to align them with the TPO's own Codes of Practice for Residential Sales and Lettings Management.

The Residential Sales Code has previously received approval under the Office of Fair Trading's Consumer Codes Approval Scheme (CCAS) and in the light of the developing market and legislative changes we reviewed this Code and as required by the CCAS submitted a request for approval of this to the OFT some two years ago. In that time of course some of the legislative

changes that we needed to ensure were in the Code have been and gone, specifically Home Information Packs, and we will now have to revise the revisions.

"It is a step towards the consumer having enhanced protection for every element of the transaction and for the industry (in terms of referencing agents) offering a consistent level of service to its customers"

A similar story applies to our attempts to seek approval for the Lettings Code. Nearly three years have passed since we first submitted this to OFT but despite responding to numerous comments and queries we remain without any clear understanding being given as to where we are in the approval process or when approval might be forthcoming.

The Codes represent comprehensive sets of standards by which firms conduct their business. Knowing that a firm is complying with those standards will give consumers confidence that they are dealing with an organisation which has a structured approach to customer service. Holding the independent accreditation from the OFT shows that protection and fair treatment for consumers is being treated as a priority by agents. It is disappointing therefore that this matter has not been treated with sufficient application and alacrity by the OFT.

I suggest that if the property sector is left without a mechanism for examining and encouraging consumer codes then the time may have come for it to establish, in conjunction with consumer groups, another and robust independent accreditation body. Meanwhile TPO continues to press for the CCAS approval process to be finalised and continues to operate its Disciplinary and Standards Committee (DSC) to meet the requirement for dealing with those instances where a serious breach of the Code has occurred.

During 2010 I referred 13 new cases to the DSC, 12 of those considered and finalised by the DSC related to lettings disputes and one to a sales dispute.

Of these:

- two cases were referred to Trading Standards and the complainants were provided by me with papers to assist in any future court action they may wish to take against the agent.

Ombudsman's Report for 2010

- four cases where the agent paid the award which had been outstanding.
- one case where the agent went into liquidation and the complainants are considering group action.

Six cases were still under deliberation at the end of 2010.

The two cases which were still under deliberation at the end of 2009 were resolved as follows:

- one case where the agent's membership was terminated and the OFT and Trading Standards were informed. The agent was advised of the implications of not being in an approved redress scheme.
- one case where the agent paid the award and other compliance issues were resolved.

Monitoring of compliance with the Sales Code is undertaken by Referenceline. The results of this fully independent monitoring exercise are reported at pages 27 to 30 of this report but in summary show that 93% of sellers and 89% of buyers indicated general satisfaction with the service received from the agent and 83% of buyers, 90% of sellers reporting that sales agents they had dealt with were complying with the Code. This monitoring takes account of all agents signed up to the Code of Practice, not just those who have been the subject of complaint. Knowing that this monitoring, which is carried out on a random basis, might be conducted provides further encouragement for firms to maintain high standards.

Having already stated elsewhere in this report that standards in the lettings sector have yet to reach the same level as the sales sector, it is further disappointing that the OFT cannot prioritise the code approval which then gives the TPO a mandate to have a similar survey conducted in the lettings sector.

Workload 2010

Cases

I previously forecast that my 2010 workload would consist of two-thirds lettings disputes, with the remainder, except for small numbers related to other areas of jurisdiction, being sales disputes. I based that forecast on the general trend in cases over previous years, a calculation of the number of cases I would receive overall based on initial enquiries being received and, more particularly in respect of sales, what I could see happening in the market place. A significantly reduced number of housing transactions, to my mind, should have led to fewer referrals to my office. I can offer no explanation (and neither can those who I

have spoken to in the industry) for the fact that my workload split almost evenly between sales and lettings. Overall workload was 40% ahead of my forecast with the "excess" purely down to the numbers of sales disputes received.

"...93% of sellers and 89% of buyers indicated general satisfaction with the service received from the agent and 83% of buyers, 90% of sellers reporting that sales agents they had dealt with were complying with the Code"

In all, my office received 1,330 new referrals, 646 sales and 672 lettings with the remainder related to HIPs and Residential Leasehold Management – the highest ever recorded in the 20 years of the scheme's existence and 28% higher than the previous peak in 2008 of 1,043.

Having resourced to meet the forecast workload but then faced with a significantly larger number of cases to be achieved, it was necessary to recruit additional case officers. That process takes time to find the right people with particular skills suited to case officer work and the consequence of catching up with cases on hand has meant an extending of resolution times.

Recognising that hearing nothing can be a frustration, complainants are regularly updated as to the position regarding their case together with our targets for commencing consideration and advising of outcome. Nonetheless an extended timescale is, as we fully recognise, unacceptable and I am confident that we will improve turnaround times soon in this New Year.

Closures are achieved within 90 days of receipt for 38% of cases and 79% within 120 days.

Our early resolution procedure, where we assess that the parties, although in dispute, are not necessarily far apart either in what action the complainant wants or in terms of compensation on offer by the agent for aggravation, distress and inconvenience, brought about the determination of 4% of cases. All cases are initially scanned to see if such an early resolution can be achieved and if it falls within the category above one of my case officers will contact the parties to bring about a conciliation or acceptance without a formal settlement. I would hope that we could extend this approach but the majority of cases being received in the office have multiple aspects and show a complete breakdown in relationships, with any attempt to settle the matter informally often rebuffed, generally by the consumer.



Either the complainant or agent represents against 23% of my proposed decisions. There is a marked difference between the proportion of representations in relation to sales and lettings. Many of these 'representations' are actually reiterations of the original complaint.

Full statistical analysis of the year's workload and other data relating to the disputes I have considered can be found at pages 10 to 13 and page 20.

Enquiries

Enquiries or initial contacts are made by individuals who feel they have been disadvantaged by an agent who appears to be operating within my jurisdiction. The role of my enquiry team is to determine whether or not the matter referred to is indeed within my jurisdiction and to guide the complainant as to how the complaint should properly be progressed through the firm itself, that being a necessary step before I can become involved.

Inevitably my office receives numerous complaints which are not matters I would be able to consider and the vast majority of those that I could action first need referral back through the agent's complaint handling procedure. My office does not comment on the merits (or otherwise) of the case at this stage, but every submission requires a detailed examination and occasionally enquiries to be made of the agent to determine precisely what is the next proper action. Given that many enquiries are reaching me where I have no jurisdiction to act and, from the results of our consumer enquiry survey it appears that many people who contact my enquiry team are then dissatisfied because we cannot resolve the matter based on a telephone call, letter or email, we have set about trying to better manage customers' expectations.

Anybody telephoning the office receives a message explaining that complaints need to be first referred to the member agent for a final viewpoint to be determined by that agent, that my office cannot give legal advice; and, for example, that certain matters might be excluded from my jurisdiction. We do the same by automated acknowledgement of emails. We try to encourage consumers to view the TPO website and this is proving to be successful in that over 32,000 individual sessions per month were recorded (in all 3.7 million individual page hits were recorded for the year).

More than that, I have this year published four guides to consumers (landlords, tenants, sellers, buyers) to explain to those groups what issues I perceive are giving rise to complaints in the first place. Based on my experience of handling disputes, these guides are designed to equip consumers better for when they come into contact with an agent to assist them in clarifying something they do not understand or where to exercise caution.

The overall aim is to help avoid a complaint arising in the first place. The guides are reproduced at 39 to 42 in this report.

During 2010 my office dealt with 13,559 enquiries. Email (increasingly and inevitably so) brought 22%, 12% came by letter and the remainder by telephone. The total represents a 6% increase on 2009 but more particularly those matters within my Terms of Reference, and which could ultimately come back as formal referrals, have decreased by 1% on the sales side but increased by 20% on the lettings side. We aim to process every enquiry within 10 working days.

Independent Reviewer

A number of complainants and agents have throughout 2010 expressed their dissatisfaction with service received from my office, after I had decided the dispute which involved them. I examine all such expressions to be satisfied that my procedures have not brought about the disquiet. I will respond accordingly, although it is sometimes difficult for an aggrieved individual to distinguish between dissatisfaction with my award and what is a grievance about process. If I cannot settle the matter, then I refer the individual to the Chairman of the TPO Council. If the Chairman is unable to satisfy the person complaining then he will afford them access to our Independent Reviewer whose report features later in this general report of TPO activity. During 2010, I dealt with 17 such complaints - seven found their way to the Chairman of the Council and five to the Independent Reviewer.

Closing Remarks

As I have already described, 2010 has been a very busy year for my office. Because of the unexpected work levels, we have had to work very hard to keep on top of the situation but whilst at times the work on hand meant that turnaround times had to slip everyone in the office applied themselves to maintaining an acceptable level of service to our customers. This year has seen yet more new areas of jurisdiction for all departments to become familiar with and once again I have been grateful for, and impressed, by the commitment of every individual shown in the staff list on page 31. I thank them all.

Christopher J Hamer
Ombudsman

General Statistics

Enquiries			2009	2010	% Difference
1	GENERAL ENQUIRIES				
	From Estate Agents (does not include membership)		437	389	
	From Letting Agents (“)		12	33	
	From the Media		7	0	
	From the Public		1135	894	
	TOTAL		1591	1316	-17
2	COMPLAINT ENQUIRIES AGAINST AGENTS				
	Complaints against non Member Agents - Sales		526	641	
	Complaints against non Member Agents - Lettings		1776	1670	
		Sub Total 1	2302	2311	0
	Complaints against MA outside terms of reference - Sales		174	24	
	Complaints against MA outside terms of reference - Lettings		184	89	
		Sub Total 2	358	113	-68
Complaints against Member Agents Within Terms of Reference - Sales					
	From Complainant who is a Seller		1927	1974	
	From Complainant who is a Buyer		1117	962	
	From Complainant who is a Seller & Buyer		54	44	
	Complainant unwilling to state whether Buyer or Seller		96	177	
		Sub Total 3	3194	3157	-1
Complaints against Member Agents Within Terms of Reference - Lettings					
	From Complainant who is a Landlord		1493	1567	
	From Complainant who is a Tenant		1998	2422	
	From Complainant who is a a Landlord & Tenant		0	2	
	Complainant unwilling to state whether Landlord or Tenant		100	304	
		Sub Total 4	3591	4295	20
	Complaint about MA Sales but non-member Lettings	Sub Total 5	476	389	-18
	Complaint about MA HIP but non-member Sales/Lettings	Sub Total 6	0	10	
	Insufficient info given as to whether Member/Non-Member	Sub Total 7	3	0	
	Other Enquiries	Sub Total 8	1241	1519	22
	Complaint enquiries against all Agents	Totals 1-8	11165	11794	6



Cases		2009	2010	% Difference
3	COMPLAINTS - CASES			
	Workload Sales - received	456	646	
	Workload Lettings - received	435	672	
	TOTAL	891	1318	48
	Productivity:			
	Cases Reviewed in Year - Sales	571	557	
	Cases Reviewed in Year - Lettings	476	532	
	Sub Total 1	1047	1089	4
	Representations conducted in Year - Sales	104	113	
	Representations conducted in Year - Lettings	114	136	
	Sub Total 2	218	249	14
	TOTAL	1265	1338	6
4	CASES CLOSED IN YEAR SALES	562	558	-1
	Description of Complainant			
	Seller	416	377	
	Buyer	130	167	
	Seller & Buyer	16	14	
	TOTAL	562	558	-1
	Findings:			
	Outside Terms of Reference/Not Pursuing	4	4	
	Complainant Withdrawal/Complainant & MA resolution/ Conciliation	9	17	
	Against Complainants (no Award made)	199	221	
	MA out of business (not pursuing)	2	0	
	Sub Total 1	214	242	
	For Complainants (Award made - Member Agent made No Offer)	308	275	
	For Complainants (Award made - Member Agent made Offer) (4)	36	29	
	Conciliation/Complainant & MA resolution	4	12	
	Sub Total 2	348	316	
	TOTAL	562	558	-1
	Size of Awards			
	£ 1-99	85	93	
	£ 100-499	208	186	
	£ 500-999	36	26	
	£ 1000-2999	15	8	
	£ 3000+	4	3	
	TOTAL	348	316	-9
	Total value of Awards made - Sales	£118,073.48	£81,571.60	-31

General Statistics

Cases		2009	2010	% Difference
5	CASES CLOSED IN YEAR LETTINGS	490	525	7
	Description of Complainant			
	Landlord	300	305	
	Tenant	190	220	
	TOTAL	490	525	7
	Findings:			
	Outside Terms of Reference / Not Pursuing	2	6	
	Complainant Withdrawal / Complainant & MA resolution / Conciliation	2	7	
	Against Complainants (no Award made)	163	146	
	MA out of business (not pursuing)	0	1	
	Sub Total 1	167	160	
	For Complainants (Award made - Member Agent made No Offer)	298	323	
	For Complainants (Award made - Member Agent made Offer)	19	19	
	Conciliation/Complainant & MA resolution	6	23	
	Sub Total 2	323	365	
	TOTAL Sub Totals 1-2	490	525	7
	Size of Awards			
	£ 1-99	78	102	
	£ 100-499	164	205	
	£ 500-999	39	25	
	£ 1000-2999	35	29	
	£ 3000+	7	4	
	TOTAL	323	365	13
	Total value of Awards made - Lettings	£151,508.89	£145,900.92	-4

6	CASES CLOSED IN YEAR SALES & LETTINGS	1052	1083	3
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Representations Completed		
No of Representations	218	178
From Member Agent	57 (see Note 1)	46 (see Note 3)
From Complainants	161 (see Note 2)	132 (see Note 4)

Results of Representations

1. 31 findings reduced (6 factual error, 25 new info), 26 findings unchanged (1 new info, 25 no new info).

2. 1 findings reduced (1 new info), 14 findings increased (2 factual error, 12 new info), 146 findings unchanged (4 new info, 2 factual error and 140 no new info).

3. 21 findings reduced (3 factual error, 16 new info, 2 no new info), 2 findings increased (2 new info), 23 findings unchanged (21 no new info, 1 new info).

4. 3 findings reduced (3 new info), 19 findings increased (5 factual error, 14 new info), 110 findings unchanged (7 new info, 2 factual error and 101 no new info).

Complaint Information

Sales



Cases Formally Reviewed	2010
Administration	7
Agency Agreement	38
Commission/fees	113
Communication failure	214
Communication of offer – purchaser	33
Communication of offer – vendor	26
Complaints handling	163
Conflict of interest	17
Deposit	5
Duty of care	55
Gazumping	4
Harassment	8
HIP fee	29
HIPs	50
Instruction failure	13
Keys	10
Marketing	39
Marketing fees	8
Other	48
Outside terms of reference	3
Purchasers finances	23
Referral fee	1
Rudeness	34
Sale board	8
Sales details/advertising/marketing	138
Unfair bias towards other party	10
Valuation	36
Viewing	54
Withdrawal fee	11
Discrimination:	
Offer of Financial Services	0
Racial	1
Gender	0
Disability	0

Value of Property	2010
<£99,999	9%
£100,000-£149,000	17%
£150,000-£199,000	27%
£200,000-£249,000	13%
£250,000-£299,000	10%
£300,00-£349,000	6%
£350,000-£399,000	5%
£400,000-£449,000	2%
£450,000-£499,000	2%
£500,000+	5%
Not identified	4%

Property Type	2010
Bungalow detached	4%
Bungalow semi detached	3%
Bungalow terraced	0%
Bungalow link detached	0%
House detached	23%
House semi detached	26%
House terraced	18%
House link detached	0%
Maisonette	1%
Apartment/Flat	15%
Not identified	10%
Park Home	0%

Agency Agreements	2010
Sole agency	64%
Joint sole agency	2%
Multi agency	6%
Sole selling rights	7%
Buyer – no agency agreement	11%
Not identified	10%

Reviews by area % 2010 (2009 figures)

3 SCOTLAND/ NORTHERN IRELAND (6%)	5 NORTH EAST (6%)
10 NORTH WEST (10%)	4 YORKSHIRE (5%)
3 WALES (2%)	5 WEST MIDLANDS (8%)
8 EAST MIDLANDS (8%)	12 EASTERN REGION (14%)
13 SOUTH WEST ENGLAND (11%)	26 SOUTH EAST ENGLAND (22%)
9 GREATER LONDON (14%)	2 NOT IDENTIFIED (N/A)

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

Messages

Sales

Property Misdescriptions Act 1991

It is not part of my remit to make a legal judgement on whether an agent has broken the law in relation to the Property Misdescriptions Act (PMA) 1991 but rather it is for me to assess what has occurred against the Code of Practice. If a dispute is referred to me where the complainant has claimed that he has been misled by the description of the property I will be looking to see if the agent should have been aware that all was not as it seemed in relation to that aspect of the property where the misdescription is claimed. If he was 'on notice' or indeed should have been aware that something was unusual then I would expect that agent to have made further enquiries before making any statement about the property.

Common examples of misdescriptions brought to my attention are car parking facilities, single glazing units described as double glazing and extensions or loft conversions described as habitable rooms when no building regulation approval has been granted.

A cautionary note is necessary here in that the Consumer Protection from Unfair Trading Regulations 2008 now require full disclosure of all material information in relation to a transaction, material being defined as that information which would influence a buyer's economic behaviour. The government is consulting on whether this Act should now replace the PMA but whether or not that is carried through it remains that enforcement authorities may choose to apply these Regulations when considering whether a buyer has been misled by property particulars.

Reposessions

Where a property has been repossessed the agent is instructed by the mortgagee in possession to obtain the best price for the property. It is common practice when offers have been received on such properties, before a sale is agreed, to place a notice in the press advising of the circumstances of the sale and the amount of the best offer received so far. That notice may or may not generate a further offer. If it does then the mortgagee in possession may choose to accept that offer even if it is not higher but because the buyer is in a better position to proceed.

Whatever occurs it is the mortgagee in possession who makes the decision but someone making an offer on repossessed property should be advised by the agent that the press notice will be published and that circumstances may mean the highest offer does not always succeed.

Commission Fee

I see numerous cases where the commission fee is disputed. I will not deal with any complaint about the level of fees, that being a commercial issue, but there is often misunderstanding about whether the fee is on a fixed basis or a percentage relating to the achieved sale price. I also see complaints where there are claims that reduced rates of commission were agreed, perhaps at the time of market appraisal in conversation but that the agreement then showed the 'full' rate. If the seller signs the agreement at one rate and there is no substantiation of the earlier conversation I have to uphold the contractual documentation but I sometimes wonder why the seller should have in their mind that a different rate has been discussed. I suggest that no allusion to discounts or reduced rates should be made unless that is a serious intention of the agent.

I continue to receive disputes relating to two agents claiming a fee for the successful introduction of a buyer. The market is well aware of the legal judgment in this regard but where two agents are involved in marketing a property they really should, either at the outset or at the point of agreeing a sale (depending of course on the nature of the agency agreement), settle the split, if any, of commission at that point without causing any aggravation or inconvenience to an innocent seller.

Case Summaries

Sales



Property Misdescription

Complaint A

The Complainants had purchased the property, but after moving they discovered that a neighbour actually rented 60% of the rear garden through a Railway Company, which had purchased the land prior to the property being repossessed. The Complainants complained that the agent had misrepresented the property as per the Property Misdescriptions Act 1991, had verbally misled them regarding the size of the garden and had treated them unfairly when they failed to disclose crucial information, which allowed them to purchase a property they would never have considered, let alone purchased, had they known the truth from the start. The Complainants also complained that the agent had disregarded their financial loss and had handled their complaint “disgracefully”.

I concluded that before the Complainants had viewed or made an offer, the agent had been alerted to the fact that someone else had interest in part of the land at the property. The agent failed to check the true position or to follow up the position when advised there might be an issue and then failed to advise the potential buyers appropriately. The agent was on notice that all was not what it seemed at the property, but chose not to do anything. I also believed that the agent failed to deal with the Complainants’ complaint in a timely and appropriate manner. An award of £700 was made.

Complaint B

In this case, the Complainants (the potential buyers) alleged that the agent had misrepresented the property by advising that a footpath was included within the property for sale although a neighbouring property had a right of way over it. It later came to light that the ownership did not apply. The Complainants also alleged that the title documents within the HIP had shown the correct boundary of the property but that the agent had not provided this until the Complainants had already incurred solicitor’s and surveyor’s costs and a mortgage application fee amounting to approximately £1,300. The agent acknowledged that they had given the Complainants the incorrect information about the ownership of the footpath but explained that this information had been provided to them by the sellers of the property and the sellers of the neighbouring property and they had given it to the Complainants in good faith. The agent stated that the meaning of the Land Registry documents contained within the HIP was not clear to someone without legal training. I considered that the agent had misrepresented the property and had failed to comply with their obligations under Paragraph 4h of the TPO Code of Practice to accurately describe a property. In this case, I would have expected the agent to have made further enquiries in order to clarify the position of the boundary

and the ownership of the footpath or to have explained to the Complainants that the situation was not clear and that they would need to take their own independent legal advice on the matter. I, therefore, supported this case and made an award of £400.

Complaint C

The Complainants (the buyers) alleged that the agent’s sales particulars misdescribed the property in that they showed the property as having gas central heating. As a result the Complainants state they bought the property believing it had central heating, whereas there was no central heating or gas supply. The agent admitted the inaccuracy in their original sales particulars. I found the agent did not comply with their obligations in this respect under Paragraphs 4h and 4i of the TPO Code of Practice, and I criticised them for this. However, the sales particulars were subsequently amended, and an amended copy provided to the Complainants before exchange of contracts, and I considered the HIP for the property, and the Complainants’ own survey of the property should have put the Complainants on notice that the property was without central heating or gas supply. I did not support this complaint.

Complaint D

In this case, the Complainant (the potential buyer) alleged that the sales particulars were misleading as they indicated that the property had space for off road parking whereas this was incorrect as no such permission existed and the property had a raised kerb. In reliance on the sales particulars the Complainant submitted an offer and instructed a surveyor. The surveyor’s report highlighted that there was no permission for off road parking. I considered that the agent was put on notice that the property did not have off road parking due to the raised kerb and should have queried this with the sellers. I concluded that the agent had not taken reasonable steps to ensure that the sales particulars accurately described the property, as required under paragraph 4h of the TPO Code of Practice, and I, therefore, upheld this complaint. I made an award of £400 which represented the surveyor’s fees.

Complaint E

The Complainant (an investor buying to let) pulled out of a sale when she realised that building regulation approval did not exist for a loft room, as it was described in the sales particulars, and she could not insure herself against injury to tenants if they used the room. She felt that “loft room” misdescribed the area in question as approval did not exist for its use as liveable space. I concluded that the wording used in the particulars contained no hint of authorised use, it was an accurate description of what it was, and the photograph was not misleading as it showed the loft ladder access which was the fact which would have alerted the estate agent and, I felt, most investor buyers to the likelihood that

Case Summaries

Sales

consent did not exist. It was not the lack of approval so much as the impact on her insurance that deterred the Complainant and I felt that estate agents could not reasonably be expected to know this detail about insurance cover such that they had a responsibility in terms of best practice to advise her about this.

I did however remind the estate agent of the principles behind the Consumer Protection from Unfair Contracts Regulations 2008, and felt that in future it would be wise to state on sales particulars if it was known that building regulation approval did not exist or at least warn applicants that it may be needed and the position had not been checked, as this might be material information.

Repossessions

Complaint F

The agent had been marketing the property under the instruction of the owner Complainant for over one year prior to it being repossessed by the mortgage company. Following the repossession the mortgagee in possession instructed the same agent to market the property. It was the contention of the Complainant that the repossession of the property did not affect the Complainant's power of sale because the equity on redemption of the mortgage was vested in the Complainant. The Complainant stated that he could redeem the mortgage at any time up until the mortgagee exchanged contracts and, therefore, the Complainant could sell the property at any time up until then and any agent instructed by the Complainant would be able to do so. The Complainant argued that the agreement between him and the agent was not forfeited by the mortgagee taking possession of the property and that the agent could still have carried out the agency agreement to sell the property on his behalf.

I made it clear that it is not my role to debate or challenge the legalities of property repossession. My role is solely to consider whether the standard of service provided by the agent concerned has fallen below that expected of member agents of this scheme, thereby causing financial loss, aggravation distress and/or inconvenience to a Complainant and meriting a compensatory award. In doing so in this case I took into consideration what I deemed to be fair and reasonable under the circumstances. I was of the view that the agent was acting on the instruction of the mortgagee who had provided the necessary evidence that the property was subject of lawful repossession proceedings. I consequently considered it entirely fair and reasonable for the agent to conclude that the Complainant had ceased to have the power to sell the property and they were lawfully instructed by a client with the authority to do so – the mortgagee. I was also of the view that the agent was entitled to assume that they could

no longer act for the Complainant in the sale. Indeed, had they continued to do so, I believe this would have been a blatant conflict of interest. It was also the contention of the Complainant that, as the agent did not give them any written notice of termination of the agency agreement, this placed them in breach of contract and liable for any alleged acts and omissions committed during the period of the alleged breach.

I expressed my view that, as the agent could not have acted under the instruction of the Complainant after the repossession, the agency agreement between the Complainant and the agent would have been terminated at the time of the repossession. I was of the view that it would have been best practice for the agent to have provided formal written notice to the Complainant of their inability to act on his behalf, due to the repossession proceedings and eviction, together with the formal confirmation that the mortgagee was intending to instruct them following the repossession. Having said that, I was not overly critical of the agent as the repossession, and the agent's subsequent involvement with the mortgagee, should have come as no surprise to the Complainant being that the topic had been of extensive, and at times, hostile previous discussion between him and the agent.

I consequently dismissed the remaining complaints raised in relation to the manner in which the agent was marketing the property under the instruction of the mortgagee as all those complaints related to the period after which the property was repossessed. The agent was acting as instructed by the mortgagee and the fact that the Complainant (who was no longer the seller) disagreed with the manner in which the property was being marketed was not an issue for either the agent to address or for me to examine.

Complaint G

The property in question was being marketed by the member agent on behalf of a corporate client who was the mortgagee in possession. Following two reductions in the asking price, the Complainant made an offer which was rejected by the seller. Just over one month after her first offer, the Complainant made a higher offer which was accepted by the seller. Consequently, the Complainant commissioned a survey and instructed a solicitor within two days of the acceptance of her offer, having had the offer confirmed in writing and been advised by the agent that the property would continue to be marketed up until exchange of contracts.

On the day the survey was carried out a further viewing was undertaken by the agent which resulted in a higher offer for the property. The Complainant was given an opportunity, by the agent, to increase her offer but she declined to do so and the



seller accepted the higher offer from the eventual buyers of the property. The Complainant subsequently wrote to complain to the agent that the continuance of marketing after her offer had been accepted resulted in her incurring expenses in respect of the survey, her solicitor, time and petrol. Furthermore, the Complainant alleged that she had experienced difficulties in arranging to view any property through the agent and more specifically the property itself. It was also claimed, by the Complainant, that both she and the eventual buyers of the property had been “manipulated” by the agent in order that the agent could achieve a higher selling price.

In coming to a judgement on the complaints regarding viewings, I pointed out to the Complainant that her complaint in respect of the difficulties she had encountered in viewing any property was a generalisation upon which I could not judge without further detail and corroboration of the allegation and therefore I confined my examination of the complaint to the alleged difficulties she had experienced in viewing the property.

My examination of the branch file revealed that a number of appointments and cancellations had been recorded on the property audit report which related to the Complainant’s arrangements for viewings. It was not clear to me who had made the cancellations, but I concluded nevertheless, that interaction had taken place between the Complainant and the agent that had enabled her to make two offers for the property, one of which had been accepted. I advised the Complainant that I did not consider that she had been disadvantaged and did not support the complaint.

I also informed the Complainant that the agent had been under very specific instructions from their seller/client to continue to market the property after an offer had been received, up until the time of exchange of contracts, and she had been informed of this fact. It was the seller’s decision, and not that of the agent involved, to whom and at what price a property was sold.

I therefore concluded that the agent was not responsible for the costs incurred by the Complainant and did not support the complaint. In respect of the allegation, by the Complainant, that she had been “manipulated” together with the eventual buyers of the property, in order for the agent to achieve a higher selling price, I advised her that I considered this to be an uncorroborated allegation upon which I was not prepared to make a judgement. I did not support the complaint and consequently no award was made.

Commission Fees

Complaint H

The Complainants instructed the member agent to market the property on their behalf and entered into an agency agreement to which amendments had been made to incorporate the fact that another member agent was also involved in marketing the property. The handwritten amendments led to confusion over the type of agreement, in effect, whether it was a sole, joint, joint sole or multi agency agreement, and, consequently, the terms and conditions that were applicable to that particular agreement. The situation became further complicated when the eventual buyer, who confirmed that his attention was drawn to the property through the agent against which the complaint had been made, was allegedly upset by the attitude of that agent and refused to deal further through them. He went to the other agent with whom the Complainants had an agreement and the sale proceeded to completion through this other agent despite two warnings from the first agent to the Complainants that they may be liable to pay them a commission fee in addition to that which they paid to the other agent.

The Complainants were duly invoiced by both agents for their commission fees and refused to pay the agent who had allegedly upset the buyer on the grounds that they had only introduced the buyer, made an appointment for an unaccompanied viewing and forwarded an offer to them (which in any case was not accepted) and that the agreement between them was void. The agent contended that they had been effective in the sale and that the cause of the upset with the buyer had resulted from language difficulties for which they could not be blamed. Furthermore, they had a contractual entitlement to their commission fee, which they claimed was contained within the “multi agency agreement” into which they had entered with the Complainant. I judged that the agreement contained ambiguity that was misleading as to exactly what type of agreement was in existence but, nevertheless, there was a contract in place between the Complainants and the agent that I considered should not be totally void. However, it had led to avoidable and unnecessary aggravation, distress and inconvenience to the Complainants. I also considered written warnings, within that contract, surrounding the risk of dual fees being involved, were also confused by the nature of the agreement. I upheld the agent’s entitlement to the commission fee, as it was clear, from the evidence presented, that the agent had introduced the buyer, but made an award of £500 for the aggravation caused to the Complainants by the agent’s failure to comply with their obligations under Paragraph 3 of the TPO Code of Practice.

Case Summaries

Sales

Complaint I

A prospective buyer complained when the sale collapsed because two agents were claiming a fee. He felt that the agent with whom he negotiated the sale had not properly warned the seller or himself that her other agent would be entitled to a fee if she sold to the Complainant, and as a result he lost money when the seller pulled out of the sale because no fee compromise could be reached. He had told the second agent with whom he negotiated that he had earlier viewed and offered via the first agent and been told it was not a problem. I concluded that at enquiry stage it would have been best if he had been invited to go back to the first agent. Also it would have been best if the agent had accurately and promptly advised the seller of a potential dual fee situation. As it was, neither happened but the evidence showed that the seller had been warned promptly by her other agent and elected to continue in spite of this. Only later did she start to have doubts. At this stage the agent tried to negotiate a fee share. I concluded that the agent had no duty to advise a buyer about dual fee liability. Whatever best practice may dictate, the fact was that the seller had realised there could be a problem and had not expressed misgivings about proceeding. Once she did so, the buyer was quickly informed and the agent had tried to negotiate an acceptable fee share which sadly proved unacceptable to the first agent. I therefore felt that his losses were an inherent part of the purchase process and in no small part to the intransigence of the first agent.

Complaint J

The Complainant paid the agent £99.88 to subscribe to a three month membership of a scheme whereby the Complainant would be alerted by the agent to properties introduced to the market pre-auction. Prior to committing himself to the membership of the scheme the Complainant made it clear that his requirements were very specific. These were lock-up garages in specific areas. Details of properties then sent to the Complainant by the agent were outside of his criteria and included, for example, a former fish and chip shop and other retail premises with a hot food takeaway in an entirely different part of the country; a vacant warehouse; a former hotel and a building site. Within two weeks of registration the Complainant complained and requested the return of his fee which was refused by the agent on the grounds that the Complainant had received information with regard to relevant properties. The Complainant, however, maintained that, prior to his registration, the agent had promised to send him specific details to include seven garages which had been in his search area and which had not subsequently materialised. This was denied by the agent. I was unable to come to a formal judgement as I was unable to assess exactly what the agent had verbally promised the Complainant at the time of registration. Nonetheless, I had cause to criticise the agent as their terms and conditions, together with their specific services had not been

fully explained in writing or within the verbal “sales script” that had been supplied to me by the agent. Although I criticised the agent I did not make an award for this aspect of the complaint but invited the agent to examine the way in which their staff explain in their sales pitch, and the publicity material, what they are able to achieve and to avoid unreasonably raising their clients’ expectations by promising what they may be unlikely to achieve.

I noted the Complainant had requested that the agent cancel his membership of the scheme and refund his fee. The agent had cancelled the Complainant’s membership but not provided any refund. Whilst I appreciated that the Complainant had requested the agent cancel his account, the request also included that the agent refund his subscription. From this, my understanding was that one requested action was dependent on the other. I consequently considered it only fair and reasonable that, if the agent subsequently refused to refund the subscription fee, then the Complainant should have received the continuing service for which he had paid. Had the membership been kept open the Complainant would have received more details. This being the case the very least I would have expected to see was that the agent had contacted the Complainant and provided him with the opportunity to continue to receive the service for which he had made an advance payment whilst the complaint handling process was ongoing. It would appear this did not happen for which I made an award of £50.

Complaint K

The Complainant entered into a multi agency agreement with agent 2 whilst still under a sole agency contract with agent 1. Both agents tried to arrange viewings by the buyers but it was via agent 2 that they eventually got to see inside the house, subsequent to which the buyers made offers via both agents. Both the Complainant and agent 1 felt that agent 1 should receive the fee as their unsuccessful attempts to show the property to the buyers had preceded the successful attempt by agent 2. I acknowledged that a considerable element of luck attached to the fact agent 2 had succeeded where agent 1’s efforts had failed but nonetheless it seemed to me that the buyers’ desire to offer had been both dependent upon and therefore a consequence of the viewing arranged by agent 2 and I supported their right to a fee by virtue of introducing the buyers. I criticised the fact they had begun marketing knowing that another agent was still under a sole agency contract without expressly drawing the potential dual fee liability to their clients attention (there was a warning in the small print of their agreement), but felt that their offer to split their fee 50:50 with the other agent fairly reflected this shortcoming and noted that agent 1 and the Complainant had refused this offer. In conclusion, I supported agent 2’s claim for 50% of their agreed fee whilst making no comment on the fee claim by agent 1 against whom no complaint was made.



Executor/Probate Sale

Complaint L

The Complainant (a potential buyer) telephoned the agent to register his interest in the property but was told that it was sold. He was not advised at that time that it was a probate sale. Four weeks later the Complainant went into another branch of the agent to be advised that an offer had been accepted but that due to it being a probate sale he could still offer on the property. The Complainant made an offer on the property which was higher than the offer already accepted but the seller on behalf of the beneficiaries decided to continue with the sale to the other party who had increased their offer slightly albeit still lower than the Complainant's offer. The complaint was that had the agent informed him when he first registered his interest he could have offered and the seller may have accepted his offer. I concluded that the agent had handled the Complainant's offer fairly but criticised them for not advising the Complainant when he first registered his interest that it was a probate sale. However, I was not prepared to come to a conclusion on what may have happened if the Complainant had viewed the property when he first registered his interest. This is because there are too many variables in the buying and selling process and I do not make awards for putative (supposed) losses. I did not make an award of compensation.

Complaint M

The Complainant (the buyer) was buying a retirement home with habitation restricted to persons over 55 years of age. The agent was acting on behalf of a deceased's estate, the executors being relatives of the deceased. The complaint was that the agent misled her by not advising her that the property was in shared ownership. I was unclear as to the true status of the property at the time the property was being marketed or when the Complainant purchased it as neither party provided any evidence to support their side of the case. Notwithstanding this, the agent could only market the property based on the information provided by the sellers. I explained that initially the sellers informed the agent that they owned 70% of the property; however, after they undertook some investigations they confirmed that they did in fact own 100% of the remaining lease on the property. The agent removed the property from the market, re-evaluated the selling price based on 100% ownership and re-marketed the property at the new sale price. In my view, the agent took all reasonable steps to ensure that the information they provided regarding the property was accurate and not misleading, it was the Complainant's responsibility to ensure that the property suited her purposes. I did not support the complaint.

Complaint N

The Complainant was a firm of solicitors, selling a property in their capacity as executor of the deceased. The agent had not been instructed in connection with the sale. However, the agent had contacted a family member of the deceased and had presented a copy of their terms of business to the Complainant, in the anticipation that they would be instructed. The Complainant had chosen to instruct another agent, as they were quite properly entitled to do, but had then agreed a sale privately. The agent alleged bias against the Complainant and, following completion of the sale, submitted a commission invoice, on the basis that they should have been instructed and, if they had been, would have been entitled to such a fee. The Complainant sought a ruling from this office that there was no fee entitlement.

The agent's claim was considered to be totally without foundation. All member agents, on joining this scheme, give an undertaking to comply with the TPO Code of Practice, and in particular to act in accordance with best practice. Although not harassment, it was deemed inappropriate to seek instructions in such a manner. There was no contractual agreement between the Complainant, as seller, and the agent and no basis whatsoever for the agent to claim a fee. A direction was made to withdraw the commission fee claim.

Condition of Property

Complaint O

The Complainants moved in to find their new home wrecked by water which had cascaded through the building after the water tanks froze. The agents had previously been told that there was water coming down the walls of the building by a neighbour (pre-completion) and immediately contacted the sellers who reported back that it was a problem of a broken gutter which they had fixed. The agents knew nothing of the full extent of the damage until after completion. I concluded that they had responded responsibly to the report of water by immediately telling the sellers and that nothing in what they knew alerted them to the possibility that the sellers' account of the problem might be an understatement. There was no duty to tell a buyer about a minor repair which would not materially influence a decision to buy, and no responsibility to go to the property to look from the outside (they had no key) unless they had reason to suspect that what the seller said was not the truth. Whilst extremely sorry for the Complainants, I did not feel they could fairly blame the agent for their predicament.

Complaint Information

Lettings

Cases Formally Reviewed	2010
Administration	21
Check-in/check-out	40
Communication failure	162
Complaints handling	136
Conflict of Interest	6
Deposit	107
Duty of care	42
Electrical tests	21
Energy performance certificate	3
Eviction	4
Gas safety certificate	11
Harassment	5
Holding deposit	23
Inspections	36
Instruction failure	13
Inventory	30
Keys	21
Let board	3
Lettings particulars/advertising	19
Management Agreement	21
Management failure	123
Management fees	26
Other	46
Other fees	33
Outside Terms of Reference	8
References	57
Renewal fees	10
Rent	81
Reports & maintenance	71
Rudeness	21
Tenancy Agreement	51
Unfair bias	2
Viewings	9
Discrimination:	
Offer of Financial Services	0
Racial	0
Gender	0
Disability	0

Rent (per month)	2010
0-£400	4%
£401-£800	45%
£801-£1200	22%
£1201-£1600	11%
£1601-£2000	4%
£2000+	5%
Not identified	8%
Tenancy not began	1%

Type of Tenancy Agreement	2010
Periodic Statutory	11%
Shorthold Tenancy	71%
Other	18%

Type of Property	2010
Bungalow detached	1%
Bungalow semi detached	1%
House detached	5%
House semi detached	14%
House terrace	8%
House link detached	1%
Flat	34%
Not identified	36%

Reviews by area % 2010 (2009 figures)

4
SCOTLAND/
NORTHERN IRELAND
(2%)

2
NORTH EAST
(1%)

7
NORTH WEST
(8%)

6
YORKSHIRE
(6%)

1
WALES
(1%)

4
WEST MIDLANDS
(9%)

5
EAST MIDLANDS
(4%)

9
EASTERN REGION
(10%)

10
SOUTH WEST
ENGLAND
(8%)

22
SOUTH EAST
ENGLAND
(20%)

29
GREATER
LONDON
(31%)

1
NOT IDENTIFIED
(N/A)

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

Messages

Lettings



Management of Properties

Where you have entered into a managing agreement with a landlord you should make clear such things as frequency of inspection visits (and the nature of those visits), clarify what level of expenditure that you can incur without reference back to the landlord and generally do what you have committed to under the agreement. In many disputes I receive it is not the landlord who is complaining about the management of the property but the tenant. That tenant will advise of a repair issue and expects the agent to resolve the matter but perhaps does not understand that the responsibility for the repair lies with the landlord. As agent you have the responsibility to ensure that the landlord is aware of his obligations to the tenant, both at the outset of the tenancy but also in relation to remedial issues and if the landlord fails to act on a request relayed to him through you, then you should keep the tenant informed of progress or lack of progress.

Holding Deposits

You must give a clear and comprehensive receipt for any holding deposit that you have taken in respect of a proposed tenancy. The prospective tenant will then be clearly informed as to the circumstances under which the deposit will be forfeit or offset

against future rent payments if the tenancy proceeds. As a matter of best practice I believe also that it should be made clear what expenditure will be drawn from that deposit and the precise amounts that will be charged. I think it unreasonable for a deposit of a certain amount to be taken which far exceeds the likely expenditure incurred in setting up a tenancy and for that whole amount to be simply forfeit if the tenant backs out after a short time and where the balance of the deposit is not related to a specific cost.

Failure to pass over rent to the landlord

Agreements between landlords and agents will detail the arrangements and timescales for passing over rent received from tenants. Some landlords will be dependent on those timescales being adhered to for cash flow purposes. If there is a genuine issue which prevents the timescales being met then the landlord should be advised and an appropriate accommodation agreed.

Misappropriation of funds is an altogether more serious matter. Such action is effectively theft and leaves any agent open to investigation by the appropriate authorities.

Case Summaries

Lettings

Holding Deposits

Complaint A

The potential tenant Complainant paid a holding deposit of £241.50 to the letting agent but withdrew from the transaction one working day later. The Complainant requested the return of the deposit but the agent refused. My examination failed to persuade me that the Complainant had ever entered into a binding contract with the agent in respect of the holding deposit.

Paragraph 6f of the TPO Code of Practice provides that the agent should have set out in writing, prior to the Complainant's offer being formally accepted, any significant preconditions including circumstances in which the Complainant may have had any potential liability for fees or charges. This included any fees or charges for the processing of the Complainant's application and the implications of withdrawal of such an application. It is clear

that there never was any such agreement and at no stage was the Complainant given any written information agreeing conditions under which she would forfeit her holding deposit and conditions under which she could claim it back. The agent had therefore not met with their obligations under the TPO Code of Practice.

I accepted that it is normal practice for a holding deposit to be forfeited in the event that an applicant changes their mind for whatever reason. If I had seen evidence that the Complainant was made aware, in writing, of the nature of the payment and the preconditions attached to it, I may have been satisfied that the agent had adhered to the Code of Practice in informing the Complainant of the possible consequences of their actions. In this case, no documentation had been produced to evidence that the Complainant understood the position and I could not be satisfied that the Complainant had an opportunity to understand the terms on which her money was taken before the payment was made. I supported the complaint and made an award of £241.50.

Case Summaries

Lettings

Complaint B

The potential tenant Complainant paid the agent a non-refundable deposit of £200 to secure the property for rent. The Complainant then went to view another property after which she changed her mind about renting the first property. The Complainant then required that the agent return her deposit being that she had informed them of her change of mind within a few hours and on the same day.

The Complainant acknowledged that she had been made aware that the holding deposit was non-refundable and my examination of the branch file revealed that documents signed by the Complainant were clearly understandable and adequately set out the obligations of the parties. It was therefore quite clear that the Complainant had entered into an unambiguous and binding contract with the agent in respect of the non-refundable holding deposit.

I advised that it is normal practice for a holding deposit to be forfeited in the event that an applicant changes their mind for whatever reason, no matter what the timescale involved. I had been presented with sufficient evidence to satisfy me that the Complainant was made aware, in writing, of the nature of the payment and the preconditions attached to it. I was consequently persuaded that the agent had adhered to the Code of Practice in informing the Complainant of the possible consequences of her actions. The normal expectation associated with paying a deposit is that it temporarily secures the item to be purchased, but that some or all of it is likely to be forfeited if the buyer changes their mind. I added that anyone who pays a fee for a service cannot assume that they will recover the fee if they later decide they do not want the service. It is basic contract law, that a refund in such circumstances is not an entitlement. The complaint was not supported and no award was made.

Complaint C

This complaint concerned the agent's handling of the Complainants' (the applicants') holding deposit. It was not disputed that the Complainants paid the holding deposit in the evening after office hours. The Complainants have stated that they had never received any documentation from the agent in relation to their application to rent the property. The agent stated that they informed the Complainants that the holding deposit was non refundable but did not say when they advised them of this. Thirty six hours after the Complainants paid the holding deposit they informed the agent that they did not want to continue with their application as they were separating. From the information provided it appeared that the first time the Complainants were aware that the holding deposit was non-refundable was when they decided to withdraw from renting the property. The TPO Code of Practice makes it clear that the agent must put in writing any circumstances in which the Complainants would

have any potential financial liability to them or the landlord for fees or charges should they withdrew their application. In my view this meant that the agent had an obligation to inform the Complainants in writing at the time they took the holding deposit that this sum was not refundable; it is not sufficient for them to verbally advise them of this fact either before or as it appears in this case, after they wanted to withdraw. In my view the agent acted unfairly towards the Complainants and therefore I supported this element of the complaint. I also supported the complaint that the agent acted unfairly towards the Complainants when they refused to communicate with them after they requested the return of the holding deposit until the Complainants threatened the agent with legal action. I made an award of £600 which included the holding deposit.

Complaint D

The applicant gave the agent a £300 holding deposit that he wanted refunded when he decided not to rent the property due to him not being able to pass the referencing criteria. The agent claimed that the holding deposit was non-refundable which was why they refused to return the deposit and directed the Complainant and my office to their terms that the Complainant had agreed to when paying the £300. I noted that the terms did not state that the holding deposit was non-refundable but rather that he would be liable for reasonable costs incurred by the landlord or the agent should he withdraw. The question was what would be considered as 'reasonable costs' in these circumstances. According to the information provided by both parties, the property was still rented at the time the Complainant withdrew and I had not been notified by the agent that they had started preparing the tenancy agreement or other pre-tenancy documents. Therefore, the costs that were involved were that of re-advertising the property and the potential loss of finding an applicant that fulfilled the referencing criteria for the property whilst the property was not being marketed. I therefore supported the complaint and whilst I was unable to quantify the actual costs made by the agent I decided, in the interests of being fair and reasonable, to direct the agent to return 50% of the holding deposit which amounted to £150.

Tenancy Deposit

Complaint E

The Complainants, who were landlords, raised complaints that the letting agent failed to make them aware of a stain on the lounge ceiling which had been caused by a leak from the bathroom, returned the tenants' deposit whilst it was still in dispute, allowed the gas safety certificate to run out whilst the tenants' were still in occupation of the property, and failed to respond to letters and telephone calls. I was able to ascertain



that the Complainants were informed by the agent about the leak but not whether they were told that it was around a light fitting, due to conflicting accounts of what was said. I was also unable to ascertain whether the stain should have been detected during the three routine visits that were carried out by the letting agent and was therefore unable to come to a judgement on this Complaint. I supported the complaint that the letting agent returned the tenants' deposit whilst it was still in dispute, and, by failing to ensure that they had complied with TDS rules with regard to a reference to the deposit in the lease, had denied the Complainants the opportunity of having the dispute adjudicated. I also supported the complaint about the gas safety certificates to the extent that the letting agent failed to remind the Complainants that they were due for renewal. Finally, I was of the view that the letting agent responded to all correspondence from the Complainants, although I was unable to ascertain whether they returned telephone calls. I made an award of £200 for those elements of the complaint that I supported, which took into account the sum of £100 already paid to the Complainants.

Complaint F

The Complainant, the tenant, raised a complaint as the agent withheld £103.50 from his deposit for a checking out fee at the end of the tenancy. The Complainant advised this was done without his prior knowledge or agreement. My consideration of this case was conducted in the absence of the branch file and any submission to my office by the agent. The agent's response consisted of a brief email sent to the Complainant which they say that they charged the checkout fee at the start of the tenancy to avoid any confusion and enclosed a copy of their tenants guide. According to the Complainant he was not advised that a checking out fee would be levied either by being given a copy of the tenants guide or by some other means. The agent failed to demonstrate to my satisfaction that they provided the Complainant with a copy of a tenants guide and failed to demonstrate to my satisfaction that the Complainant agreed to the deduction of any sum from the deposit. I, therefore, supported the Complainants' claim that the agent unreasonably withheld £103.50 from his deposit. I directed the agent to return the sum and in addition I made an award of £100 in compensation.

Referencing

Complaint G

The landlord Complainant claimed that although the tenant failed referencing and required a guarantor, the agent failed to inform her of this. The Complainant also claimed that the agent allowed the tenancy to commence, despite the failed reference. From an examination of the branch file, it was evident that the tenant had financially, failed to meet prudent referencing criteria. Although

it would seem that the agent took sufficient steps to inform the Complainant that the tenant failed to pass the financial aspect of referencing, there was no evidence to demonstrate that they informed the Complainant that the Tenant would require a guarantor in order to improve their suitability. The failure of the agent to fully adhere to Paragraph 7f of the TPO Code of Practice represented a failure to act in the best interests of their client (as required under Paragraph 14a) and a provision of service inconsistent with fairness and best practice (contrary to their obligations under Paragraph 1d). Whilst I was critical of the agent's failure to adhere to these principles of the TPO Code of Practice and considered the circumstances merited an award, I also took into the Complainant's own actions and circumstances into account. Although the agent did not inform her that the tenant required a guarantor, I was satisfied that the Complainant could have made this suggestion herself, given that she was an experienced landlord and I was satisfied that, based on the information presented to her by the agent, she was willing for the tenancy to proceed. Nonetheless, I recognised that an award was merited by the agent's failure to disclose the issue of the guarantor and, therefore, supported an element of this complaint. I made an award of £50.

Complaint H

The landlord Complainant claimed that the tenant failed to pass referencing and required a guarantor and that the agent, when presented with the details of the guarantor, failed to include them as a party to the tenancy agreement. From an examination of the branch file, it was evident that the tenant did pass independent referencing partly because he had supplied details of a possible guarantor. Having been put on notice that a guarantor was required in order to ensure the tenant was a 'low risk' tenant, the agent should have taken reasonable steps to ensure that the guarantor was bound contractually to the terms of the tenancy agreement. Following an examination of the tenancy agreement, it was evident that the guarantor had not been included and there was no other evidence to indicate, contrary to the agent's assertion, that any other contractual documents had been prepared to bind the guarantor to the terms of the tenancy agreement. In failing to do so, I was satisfied that the agent forfeited the Complainant's right to obtain payment of rent and other costs from an individual who clearly was willing to act as the tenant's guarantor. Although I recognised that the tenant was responsible, under the terms of the tenancy agreement, for paying the rent and arrears, the agent's failings represented, in my view a failure to act in the best interests of the Complainants (as required under Paragraph 14a of the TPO Code of Practice) and a provision of service inconsistent with fairness and best practice (contrary to their obligation under Paragraph 1d of the TPO Code of Practice). I, therefore, supported this complaint. I made an award of £300.

Case Summaries

Lettings

Complaint I

There were four complaints brought by the landlord. They were that the agent had accepted tenants that failed to meet their referencing criteria; that they signed the tenancy agreement on the Complainant's behalf without her knowing about the referencing, refusing to add her desired clauses once she knew of the referencing issues; that they had given incorrect information as to whether the tenants worked from home and finally that the agent had failed to deal with the complaint properly. My review revealed that the agent had told the Complainant that the referencing had all come back as acceptable, at the start of the tenancy but the paperwork showed that one of the tenants incomes to rent ratio was below that which was deemed acceptable. When the agent told the Complainant about the referencing at the start of the tenancy, she asked to see the tenancy agreement which when they sent it to her, had already been agreed and signed on her behalf by the agent, therefore she (the Complainant) was denied the possibility to either reject the tenants, shorten the tenancy term or insert an earlier break and other clauses she asked for into the agreement. I, therefore, supported the first two complaints. The third complaint was that the agent had not given a consistent or accurate answer to the Complainant's question about whether the tenants worked from home. I supported this complaint. The agent's handling of the complaint had been tardy, with inaccurate information being given and the secondary investigation was missed out altogether with their first response being repeated with an additional sentence added. This second response was sent from the same person as the first response, despite the Complainant requesting the matter was escalated to Customer Services at Head Office as was set out in the agent's internal complaints process document. I supported all of the complaints and criticised the agent for exposing the Complainant to a heightened and ongoing risk. I made an award of £1,000.

Complaint J

The agent arranged a 12 month tenancy agreement between the landlord and the tenant having advised the landlord that the tenant was a Manager in the City of London who earned £51,000 per annum. Although the tenant had produced two wage slips for referencing purposes, she had also produced her passport which evidenced that she was a Nigerian national who had entered the UK four months previously on a student visa, with restrictions on her working and with no recourse to public funds. The bank statement produced by the tenant as part of the referencing process had no record of the alleged earnings being credited to the account and provided no substantiation whatsoever to support the fact that the tenant could afford to independently rent any property at all let alone one that commanded a rental of £1,030 per calendar month as was the case here. It was clear that the agent had failed to apply due

diligence in the identification of a potentially fraudulent application which was evidenced by the fact that the rent payments made by the tenant were demanded back by the credit card company due to the tenant's fraudulent use of a credit card. Faced with mounting arrears, the landlord Complainant requested that the agent activate the legal insurance which formed part of the letting agreement. The agent incorrectly informed the Complainant that she was not covered by the insurance and, despite a number of protestations by the Complainant, continued to do so over a six month period.

The Landlord had written to formally complain but the agent ignored the letter of complaint and frequent requests that the landlord made for the agent to address her concerns. As the rent arrears increased the landlord was left with no other option than to instruct and pay for her own legal representatives in order to repossess the property. When the matter went to Court, the Judge dismissed the case due to the fact that the agent had incorrectly dated the original tenancy agreement. It was later established that the Complainant had been covered by the legal insurance under the terms of her letting agreement. Legal proceedings recommenced with the landlord regaining possession of the property following its abandonment by the tenant. Some eight months after the Complainant had originally written to complain, and after the matter had been referred to my office, the agent provided the Complainant with the formal written outcome of their branch investigation. Although the agent offered the Complainant a modest goodwill gesture, a number of issues had not been addressed during this part of the in-house complaint process which resulted in the Complainant providing the agent with a comprehensive, evidenced based, written analysis of their failures. The agent then increased the goodwill gesture to £12,000 which covered the letting commission fee and the rent arrears. This was rejected by the Complainant. I made a final award of £13,335.03 which included the letting commission fees, rent arrears, a refund of overcharges made by the agent to the Complainant's account, the Complainant's legal costs for the unsuccessful repossession claim and recognition of the aggravation, distress and inconvenience suffered by the Complainant.

Complaint K

The landlord Complainant claimed that the agent failed to validate the guarantor document supplied by the tenant, which meant that the tenant was able to supply a bogus guarantor. The Complainant also claimed that, although the referencing company used by the agent recommended that photographic identification must be sought and that the agent concerned must ensure that the person signing the guarantor agreement was who they claimed to be, the agent failed to do this. In coming to a judgement, I highlighted that the specific complaints raised by the Complainant were slightly peripheral in relation to the



argument he was making that the agent failed to contractually bind the guarantor to the terms of the tenancy agreement and that he was now unable to claim any costs back from the supposed guarantor. Although in this case, both Complainant and agent provided conflicting accounts of the guarantor's true intentions, I would have expected the agent to have drafted an appropriate tenancy agreement that bound both tenant and guarantor to the terms. However, having examined the tenancy agreement drafted by the agent, it was clear that it only contained the tenant's signature, rather than the guarantor's. I was satisfied that the agent's failure to contractually bind the guarantor to the terms of the tenancy agreement would have unduly aggravated and inconvenienced the Complainant and denied him the opportunity to make a valid claim against the guarantor. As I was satisfied that the agent failed in their obligations under Paragraphs 1d, 8a and 14e of the TPO Code of Practice, I upheld the complaint and made an award of £350.

Rent

Complaint L

The Complainant, who was a landlord, complained that the letting agent had collected rent from the tenants but failed to pass it on, gave him numerous and untrue reasons for delayed payments and the non payment in rent and that, despite being sent a letter of complaint, did not try and resolve the problem. The agent failed to provide the branch file but from the evidence provided by the Complainant it was evident that despite repeated assurances that the money owed to him had been or would be paid, this was clearly not the case. This went on for a prolonged period of time and continued after the complaint was referred to this office. I supported all the complaints and made an award of £2,747.20 which included the return of the fees charged by the agent and an amount of £1,000 for aggravation, distress and inconvenience.

Complaint M

The Complainants, who were landlords, complained that their letting agent had failed to forward rent received from the tenants to them and had failed to register the deposit which they had also not returned. The Complainants had submitted to my office protracted correspondence in which the letting agent had repeatedly made assurances that the money owed was being transferred to their bank account. However, only half of the money owed was received. The letting agent also falsely claimed that the deposit had been registered with an approved scheme, admitting later to this office that it had not. I supported this complaint and directed that the letting agent pay all the monies due within 14 days and in addition make an award of £500 for the aggravation, distress and inconvenience caused to the Complainants.

Complaint N

The Complainants, who were tenants, complained that, at the end of the tenancy, the letting agent deducted and retained rent that they did not owe from the Complainants' bank account by direct debit. The letting agent stated that the rent was paid by standing order and that it was up to the Complainants to stop the payments after the last rent instalment had been made. They also stated that the payment had been automatically forwarded to the landlord and they would have to wait until this had been repaid before reimbursing the Complainants. On the balance of probabilities and the terms of the tenancy agreement, I believed that the rent was paid by standing order and it was the responsibility of the Complainants to instruct their bank to cease making payments. However, the letting agent should have promptly returned the overpayment but at the time of my review of the complaint, some eight months later, this had not been done. I criticised the letting agent for leading the Complainants to believe that the rent overpayment was being paid back into their bank account on two occasions and then failing to do so. In supporting the complaint, I directed that the letting agent refund the overpayment of rent immediately and made an award of £50 for the avoidable aggravation, distress and inconvenience caused to the Complainants in pursuing the letting agent for several months.

Management Failure

Complaint O

This was a tenant complaint, with issues raised in relation to the maintenance of the property. The Complainant claimed that there was no working toilet or shower in the property for the first ten days of the tenancy. From examination of the available evidence, I noted that the agent, in accordance with Paragraph 10b of the TPO Code of Practice, took reasonable steps to appoint a contractor to investigate and resolve the problem. Although it would appear there were some delays in the works being fully finished, these stemmed from circumstances outside the agent's control. I highlighted to the Complainant that I was unable to hold the agent accountable for the delays encountered by the contractor and that, as it was the landlords' responsibility to ensure the property as fit for rental purposes, she and the tenant may wish to contact them about any compensation they felt was due. I, therefore, did not support this element of the complaint. The Complainant also claimed that there was no adequate heating at the property, during a period of cold weather. From examination of the branch file, it was immediately evident that one of the heaters in the property was noted on the inventory check-in as having no plug to connect it to the mains supply and, despite being clearly put on notice of this issue from the very start of the tenancy, the agent failed to take any steps to resolve this

Case Summaries

Lettings

in the first instance. When the Complainant wrote to complain about this a week later, the agent still took no action for another two months, on the premise that only the tenant was authorised to report this problem. The agent finally replaced the heater over two and half months after first being aware of it; I criticised them for failing to adhere to Paragraph 10b and, therefore, supported this element of the complaint.

The Complainant also claimed that the kitchen blind did not function properly. From examination of the available evidence, it would seem that, although this issue was not mentioned on the inventory check-in report, the Complainant put the agent on notice about the problem when she first wrote to complain. Again, the agent refused to take any steps to rectify this because the tenant had not directly reported the problem. As the agent confirmed to this office that nothing had been done to address the kitchen blind, I considered that they failed to meet their obligations under Paragraph 10b and I, therefore, supported this element of the complaint. The Complainant also claimed that the carpet in the property was not cleaned. In coming to a judgement on this issue, I noted that while the Complainant made this statement, she had provided no contemporaneous evidence to support her claim and, from my examination of the inventory check-in report, there was no mention at all of the lack of cleanliness of the carpets. As the Complainant had provided no evidence to the contrary, I assumed that the carpets were sufficiently cleaned prior to the commencement of the tenancy and, therefore, did not support this element of the complaint. I made an award of £150.

Complaint P

The Complainants (the landlords) were under the impression that the management fee also included the preparation of the inventory/schedule of condition of the property. The agent's terms of business made it clear that a fee was required in the preparation of the inventory. The Complainants had not specifically requested an inventory and had paid no inventory fee. Therefore I did not support the complaint that the agent failed to prepare an inventory. Two tenancies later, the agent marketed the property as unfurnished instead of furnished and found a tenant who wanted to rent the property as unfurnished. To enable the tenancy to proceed, the agent decided to put the contents of the property into storage at their own expense. On being notified of this the Complainants produced a list of items which they stated were in the property. The agent emailed the Complainants stating that what they had on the list had gone into storage and that they took full responsibility for the items on the list. It appears that when the contents were returned to the property and the Complainants checked them against the list they had produced, some items were missing and some were broken. I took the view, based on what the agent had stated to the Complainants, that

they were responsible for replacing the missing or broken items. However, when assessing financial compensation I took into account that I did not know the value, the age or the condition of the said items prior to them going into storage. Legally a landlord should not end up either financially or materially in a better position than he was in at the commencement of the tenancy. Therefore, a landlord is not entitled to charge his tenants or in this case the agent, the full cost of having any fixture or fitting put back to the condition it was at the start of the tenancy; this would constitute betterment. However, I also took into account the undue aggravation, distress and inconvenience caused to the Complainants as a result of failures by the agent. I made an award of £340.

Preparation of property before start of tenancy

Complaint Q

The Complainant moved in to find the flat riddled with fleas. He could not occupy the flat and the landlord refused to compensate him (apart from paying for some aerosol fly killer). He complained that the agent should not have let the flat in that state, that the inventory was wrong and that the agent did not tell him until he signed that he was not responsible for maintaining the flat. The agent maintained that he was unaware of any fleas until notified by the Complainant the day after he moved in. He agreed that he had noted on the inventory that carpets had been steam cleaned having seen the cleaners at work and having assumed they would finish the job. Whether they did or not, when the Complainant complained, the agent arranged for the cleaners to return at no cost. He also incorporated the Complainant's comments in the inventory. He liaised with the landlord for Rentokil to attend to eradicate the fleas. I concluded that he had discharged his responsibilities to the Complainant. I also explained that he had told the Complainant that he would not be managing the property at the start of the tenancy as the TPO Code of Practice requires, and that even if he had been managing the flat, he was not responsible for its maintenance, that being a matter between landlord and tenant.

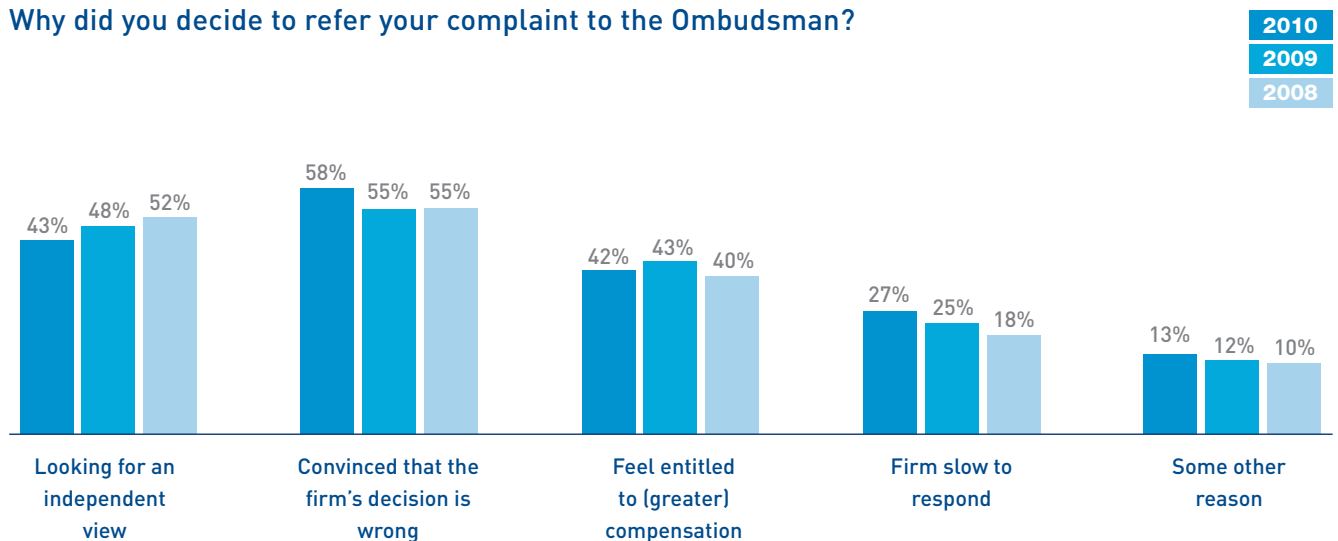
Customer Satisfaction Survey 2010



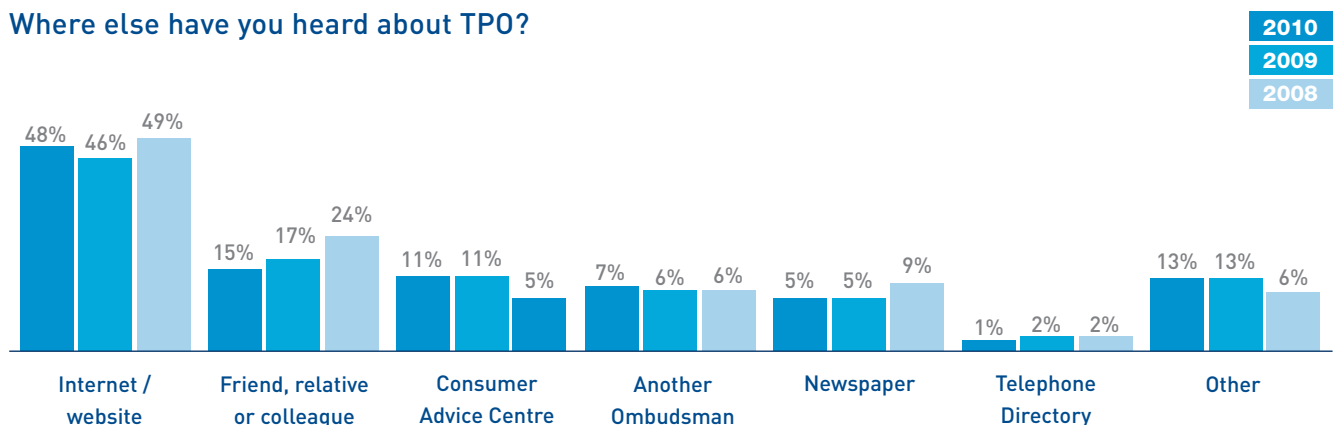
As in previous years, surveys of customer satisfaction with TPO service were conducted by sending out questionnaires to a sample of Complainants and Agents who had cases closed in 2010. The survey seeks responses to a number of questions about service, as follows.

We asked Complainants

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



Where else have you heard about TPO?



This chart shows the importance of the internet in creating awareness of TPO, but also shows that advice centres such as Citizen Advice have a part to play in guiding Complainants.

Customer Satisfaction Survey 2010

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

Overall

11%

Yes Very
2009 - 11%

16%

Yes Fairly
2009 - 17%

3%

Not Sure
2009 - 7%

16%

Not Really
2009 - 18%

54%

Not at All
2009 - 47%

Sales

13%

Yes Very
2009 - 15%

19%

Yes Fairly
2009 - 19%

4%

Not Sure
2009 - 7%

21%

Not Really
2009 - 19%

44%

Not at All
2009 - 40%

Lettings

8%

Yes Very
2009 - 7%

14%

Yes Fairly
2009 - 14%

2%

Not Sure
2009 - 5%

10%

Not Really
2009 - 15%

66%

Not at All
2009 - 59%

70% (65%) of complainants felt that their agent did **not** clearly explain their TPO membership.

For Lettings, two thirds of complainants said **“Not at all”**.



We asked both Complainants and Agents

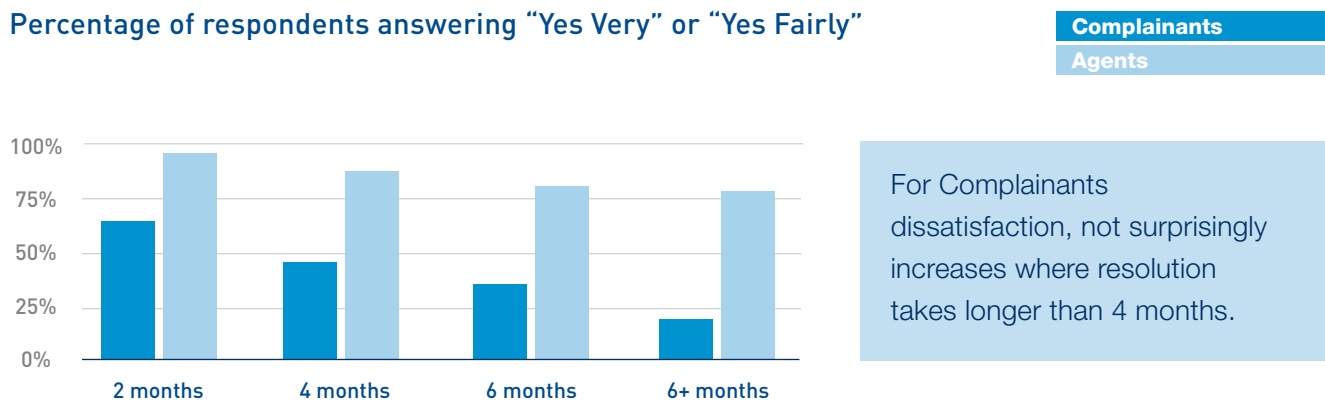
How do you find dealing with TPO?

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

The Process	Complainants 2010 (2009)	Agents 2010 (2009)
Were TPO staff polite?	84% (86%)	97% (96%)
Did you find it easy to complain to TPO?	78% (78%)	96% (96%)
Were the TPO letters clear?	79% (81%)	96% (94%)
Did the TPO explain clearly how they would handle the complaint?	83% (81%)	94% (93%)
Did you find the Guidance helpful?	75% (74%)	91% (91%)
Did the TPO respond promptly to requests?	67% (62%)	91% (86%)
Did the TPO keep you well informed?	67% (68%)	85% (78%)
Were you satisfied with the time taken to resolve the complaint?	41% (44%)	86% (81%)
Are you satisfied with the way TPO processed the complaint?	51% (53%)	91% (89%)

How satisfied were you with the time taken to close?

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



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

Customer Satisfaction Survey 2010

Consumer enquiries

This survey seeks information from those consumers contacting TPO at Initial Enquires stage.

What do you think of our service?

64%

Was your call answered promptly?

59%

Were the staff polite, helpful and responsive?

49%

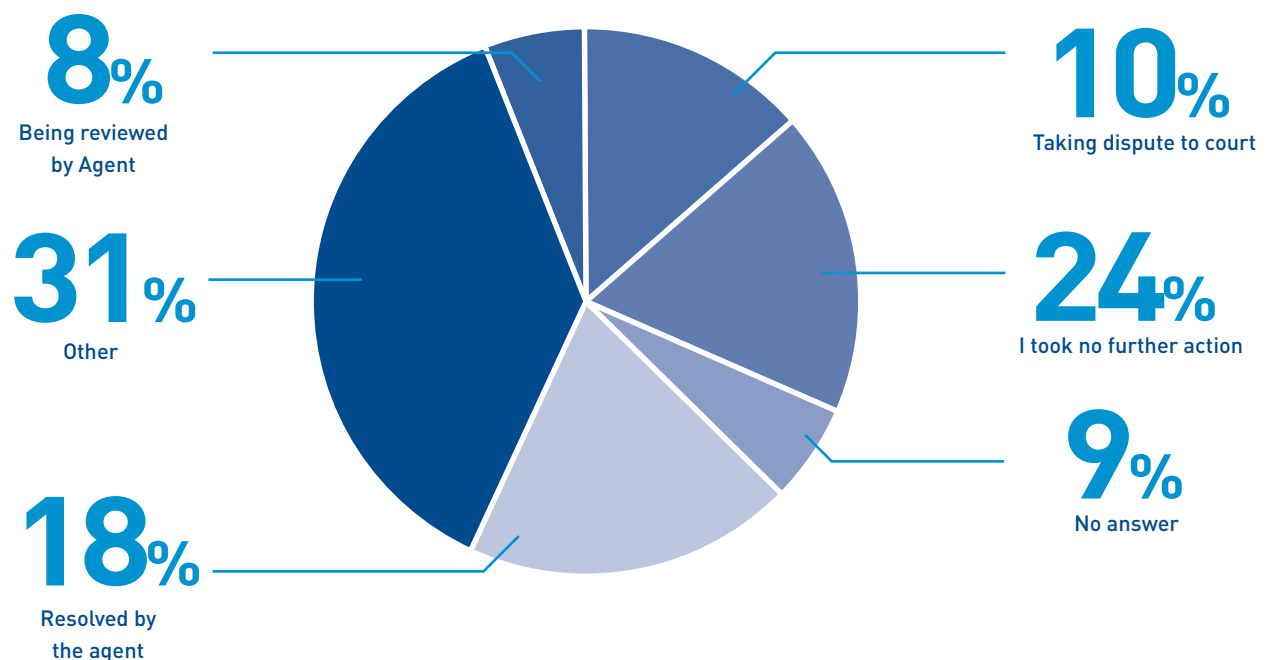
Were you given clear information to answer your questions?

37%

Overall are you satisfied with the TPO service to date?

The detailed comments received in response to the survey continue to show consumer frustration when TPO is unable to help in relation to unregistered agents and may give low ratings even though this is outside TPO control. This, as described earlier in the report, is an area being worked on such that there is better management of customer expectations.

What happened next?



As in 2009, roughly 2/3 of cases fall under the general heading of no answer, no action or other. Some 26% cases are resolved or being reviewed by the agent and 10% say they will take the matter to Court.

Staff

As at 31 December 2010



Title	Name
Ombudsman	Christopher J Hamer
PA to Ombudsman	Stephanie Spencer
Finance Manager Finance Assistant	Sarah Davies Louisa Dawson
Support Services Manager	Sue Hurst
Senior Case Officer (Team 1) Team 1 Case Officers	Colin Dixon Josephine Bailey Alan Bowers Peter Habert Patrick Lewis
Senior Case Officer (Team 2) Team 2 Case Officers	Jane Reed Amy Graveson Sandra Pooke Christine Rowland-Jones Matthew Tucker
Senior Case Officer (Legal)	Kate Chandler
Senior Case Officer	Maria Evans
Case Support Manager Case Support Assistant Manager Case Support Team	Amanda Stiggants Joanne Beatty Roz Butcher Jacqueline Gapper Lynn Howlett Natasha Russell
Initial Enquiries Manager	Anya Browne
Initial Enquiries Assistant Manager – Sales Sales Enquiries Team	Debra Aitken Martin Noke Annemarie Simpson-Wild Susan Russell
Initial Enquiries Assistant Manager – Lettings Lettings Enquiries Team	Sarah Andrews Bob Burke Frances Forster Kimberley Saunders Karen Whyman Kirstie Williams
Membership Manager Membership Assistant Manager Senior Membership Administrator Membership Finance Assistant Membership Administrator Membership Compliance Manager Membership Compliance Senior Administrator	Sarah Sartin Emma Harris Nicole Lake Anne Hall Jay Johnson Janet Fitzpatrick Anne Ing

Council Members

Lord Richard Best OBE

Lord Best is President of the Local Government Association; Treasurer of the Royal Society of Arts; a Trustee of The Tree Council; Chairman of Hanover Housing Association; 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; Deputy Chairman, Westminster City Council Standards Committee. He has previously acted as Chief Executive of the Joseph Rowntree Foundation and as Chief Executive of the Joseph Rowntree Housing Trust. Lord Best has been Chairman of the TPO Council since April 2009.

Hilary Bainbridge

Hilary Bainbridge is currently Waterways Ombudsman (dealing with complaints about British Waterways) and Lay Assessor for PhonepayPlus. She also works for other Ombudsmen and regulators as a consultant, and is an independent member of the Standards Committee of North Yorkshire County Council. Previous roles include being Deputy Local Government Ombudsman, a Director of Investigations for the Parliamentary and Health Service Ombudsman and a Mental Health Act Commissioner.

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 and NAVA. 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 organisations 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 immediate past Chairman of the International Consortium of Real Estate Associations (ICREA).

Noel Hunter OBE

Noel Hunter currently chairs the 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 care group of social care companies. He serves as a Warden (Director) of the Birmingham Assay Office and as a member of the Board of the European Union sponsored EMARS project, 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. During 2010 he was also appointed Chair of the Management Board of the Homebuilders Consumer Code.

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.

April Stroud

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

Vivienne Sugar

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

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

Independent Reviewer's Report



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

There is no appeal against the final decision made by the Ombudsman on the merits of a case or on any redress he orders. My terms of reference limit my consideration to service complaints or the service aspect of wider complaints. This covers the way complaints have been handled (including compliance with published procedures), the efficiency of the work of the Office and the conduct of its staff.

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

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, and listen to (legitimately) recorded tapes of telephone conversations between complainants and TPO staff. In my response to the complainant (which I copy to the Ombudsman), I review the conduct of the case, respond to the points made in the letter of complaint to me, set out my conclusions and, when I uphold the complaint in whole or part, I make my recommendations to the Ombudsman.

I understand that there were a total of 17 service complaints during 2010 (21 in 2009), 7 of which progressed to the Chairman of the Council (2009: 11). 5 of these remained unresolved and were referred to me (2009: 6).

Two of these five cases were brought by sellers and three concerned lettings – one from a landlord, one from a tenant and

one from a member firm. Interestingly, the Ombudsman had partially supported the complainant in three of the five cases and had proposed compensatory awards. I found no shortfall in the standard of service given by the TPO in any of the five cases brought to me this year (2 out of 6 in 2009).

In three cases it became apparent on examination that the complaint was really about the Ombudsman's decision, his decision making process or the amount of his award. In the remaining two cases the service element was small in relation to the complainant's dissatisfaction with the Ombudsman's decision and/or award. It appears to me that these complainants, having exhausted all the internal TPO procedures, remained discontented essentially with the Ombudsman's process, being unable (often despite repeated explanations) to recognise the limits placed on the Ombudsman's jurisdiction by his Terms of Reference. They then resorted to the service complaint route, sometimes pursuing their cases single-mindedly at some personal cost to themselves. These cases mostly rested on the lack of written or corroborating contemporaneous evidence to support their contentions.

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 service complaints procedures. Also I recognise that TPO staff are sometimes called upon to deal with very distressed, often angry complainants, whom I note they have treated in a professional and sensitive manner.

In September, the Council asked me to extend my role by examining a sample of enquiries and cases brought to the TPO to check that the internal procedures are being properly followed and that publicised targets are being met. I have made a start on this work and will report my findings to the Ombudsman and Council during 2011 and include a summary in next year's annual report.

Cyril Lanch
Independent Reviewer

Report from the Board

of The Property Ombudsman Limited (TPO)

Membership of the scheme continues to grow despite the difficult times the property industry still faces. By the end of 2010, we had achieved a total membership of 8,008 firms covering 13,756 offices, with 11,321 of them handling property sales and 7,851 dealing with lettings.

It is encouraging that all three figures show growth in comparison with the end of 2009, the more so when the continued low level of property sales is taken into account and with the continuing lack of any legal requirement for lettings agents to have any form of client money protection or redress in place.

Protection for tenants

That 7,851 offices were, by the end of the year, operated by agents voluntarily signed up to our Lettings Code of Practice, which requires them to have indemnity insurance in place, can only be a good thing. As the Ombudsman says in his report, it is regrettable that we still await OFT approval of our Lettings Code when last year I reported it had been submitted for approval during 2008 and I was hopeful of an early outcome. This has not yet occurred but whilst the Code itself is agreed, the monitoring arrangements have not and we cannot therefore progress to OFT stage 1 approval.

With an increasing number of people likely to spend much of their adult lives as private sector tenants, it is surely unacceptable that they and their money (and landlords' money) should remain unprotected from rogue elements within the industry. Clearly many letting agents agree with this sentiment, which is why their landlords and tenants benefit from their TPO membership.

I would urge consumers to seek out agents who are members of TPO and use them – premises are normally easily identified through the display of our logos although our website at www.tpos.co.uk gives the best guide to current membership.

Last year I reported that we had changed our name to The Property Ombudsman from the Ombudsman for Estate Agents to reflect more accurately the work we undertake.

It meant replacing our original triangular black logo with more distinctive green and blue designs but sadly some agents still seem to be lagging behind the times in that they still display the old logo. I have raised this several times during my regular

newsletters to members and I would urge all to ensure they have the correct design in place.

Compliance and Satisfaction Surveys

We continue to use Referenceline to good effect to carry out our surveys and the results are set out on pages 27 to 30. We have undertaken a review of the results over the last six years which shows a steady increase in both satisfaction and compliance rates as seen by consumers.

At present these only apply to sales agents – if the Lettings Code had been endorsed by OFT for its Consumer Codes Approval Scheme then lettings agents, too, would benefit from similar surveys.

It is a valuable tool for members as it points out where their businesses are performing strongly and also where they can make significant improvements. There is reassurance for consumers over the results, too, as any that seem too good, as well as those that are poor, can mean a mystery shop of the agent by a separate contractor.

Financial Results

The financial results are shown in the accounts attached and continue to indicate a healthy position. I am pleased to report a positive surplus with Shareholders funds of £1,312,096 (net current assets £1,155,192). Some of these funds are reserved for known expenses in 2011/2012 and the Board considers it prudent to hold a balance in case of unforeseen circumstances which might impact financially on TPO; and for the cost of moving premises from Beckett House to Milford House in April.



Improving efficiency

We have completed negotiations for new premises at Milford House, Milford Street, Salisbury and it is planned to move into these in April. This should relieve the overcrowding in our current premises which has served us well for 20 years and bring important new facilities such as meeting, and interview rooms.

Moving offices had been delayed for several years by the fragile state of the estate agency industry and the Board's desire not to burden the organisation with higher costs but it became an operational necessity to find more space to improve efficiency.

I would like to thank the Ombudsman and all the team in Salisbury for continuing to achieve so much in such tight confines and as the workload grew by more than any of us could anticipate. My own staff, in addition to the Board and Council, have continued to be a great support and have made a significant contribution to the scheme's success.

Our members should also be congratulated – sales agents for seeing a real drop in the gravity of complaints against them and lettings agents for joining the scheme at a time when our legislators see fit to ignore the plight of landlords and tenants.

W A McClintock
Board Chairman

List of directors and movements for year 1 Jan 2010 to 31 Dec 2010:

W A McClintock (Chairman)

G R Fitzjohn (Vice Chairman)

Lady J Oakes, Connells

M I Stoop, Xperience

P A Smith, Spicerhaart

D J Newnes, LSL Property Services plc

M Robson, Andrews

M N Williams, Williams & Goodwin

E P Mead, Douglas & Gordan

M J S Goddard, Belvoir (appt 12 May 2010)

P Offley, Halifax (resd 27 Jan 2010)

D I McKillop, McKillop & Gregory (resd 5 Aug 2010)

Royal Institution of Chartered Surveyors
– currently D Dalby

National Association of Estate Agents
– currently P Bolton-King

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 2010

	2010 £	2009 £
Turnover	1,981,872	1,707,816
Cost of Sales	(6,978)	(6,319)
Gross surplus	1,974,894	1,701,497
Administrative expenses	(1,710,460)	(1,489,353)
Operating surplus	264,434	212,144
Other interest receivable and similar income	23,951	24,151
Surplus on ordinary activities before taxation	288,385	236,295
Tax on surplus on ordinary activities	(5,030)	(5,100)
Total incoming resources	283,355	231,195

Balance Sheet at 31 December 2010

	2010 £	2009 £
Fixed assets		
Tangible fixed assets	156,896	60,334
Investments	8	8
	156,904	60,342
Current assets		
Stocks	3,793	8,577
Debtors	125,597	117,440
Cash at bank	1,990,063	1,621,673
	2,119,453	1,747,690
Creditors amounts falling due within one year	(964,261)	(779,291)
Net Current assets	1,155,192	968,399
TOTAL NET ASSETS	1,312,096	1,028,741
Capital and reserves		
Retained reserves	1,312,096	1,028,741
Members' funds	1,312,096	1,028,741

Approved for and on behalf of the Board 4 March 2011, **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.

A K Coldwell (Senior Statutory Auditor)
for and behalf of Moore Stephens (South) LLP
Date of approval of the full accounts 4 March 2011

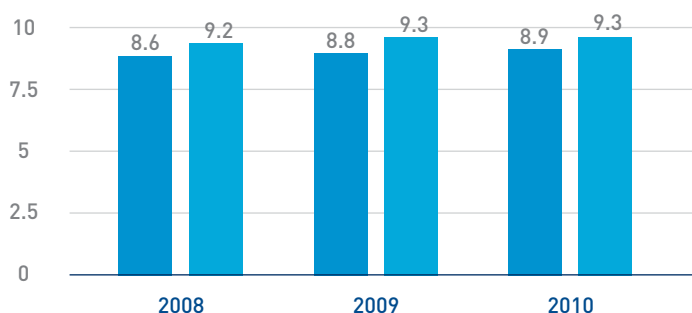
Compliance Tables



Monthly Surveys of Buyers and Sellers for the OFT Approved Code

The monthly surveys of Buyers and Sellers show consistent results for satisfaction, Code compliance, awareness of TPO and recommending the agent to friends. Results for Sellers are slightly higher than for Buyers:

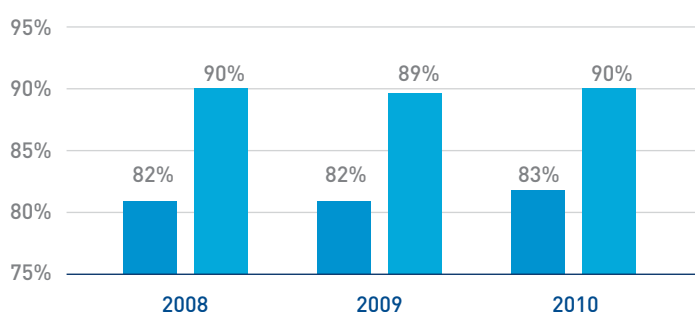
Satisfaction (ratings out of 10)



Buyers
Sellers

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.

Code compliance



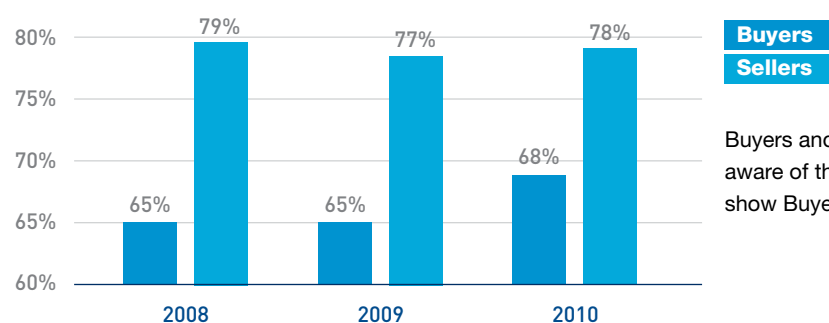
Buyers
Sellers

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?

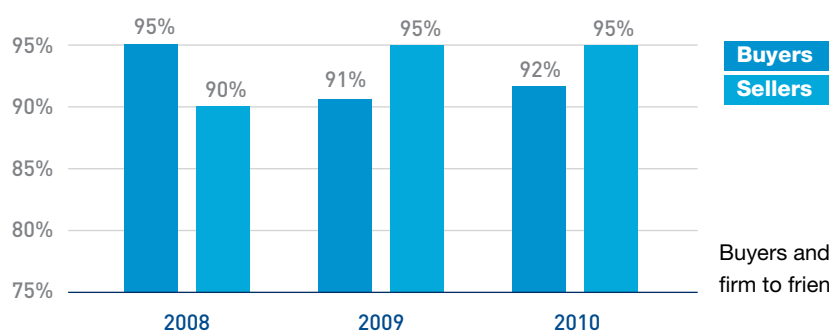
Compliance Tables

Awareness of TPO



Buyers and Sellers are asked whether the firm made them aware of their membership of the TPO scheme. The results show Buyers are less likely to remember having being told.

Recommended



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

Improvements from 2004 to 2010

Satisfaction	Sellers	Buyers	Total
2004	8.8	8.2	8.5
2005	8.8	8.4	8.6
2006	8.9	8.4	8.7
2007	9.0	8.5	8.8
2008	9.2	8.6	8.9
2009	9.3	8.8	9.1
2010	9.3	8.9	9.1
Grand Total	9.0	8.6	8.8

Compliance	Sellers	Buyers	Total
2004	87.1%	78.8%	83.6%
2005	88.3%	82.0%	85.7%
2006	88.6%	82.2%	85.9%
2007	88.8%	82.0%	86.0%
2008	89.9%	81.6%	86.5%
2009	89.4%	82.4%	86.4%
2010	89.6%	82.8%	86.8%
Grand Total	88.9%	81.7%	85.9%

Essential Guides



Guidance for Consumers (Buyers)

This guide highlights the most important matters to be considered and to be aware of when dealing with estate agents during your search for a property to buy.

All agents displaying The Property Ombudsman logo should be following a comprehensive set of standards laid down in the TPO Code of Practice, a copy of which can be obtained from any member agent or from the website at www.tpos.co.uk. A copy can also be obtained from the Ombudsman's office (telephone 01722 333306) where further assistance can be given if you feel you have been disadvantaged by an agent.

A general guide for consumers (Consumer Guide) is also available from the same sources.

You should also understand that there may be several different people with whom you will have contact during the purchase of a property, each with different responsibilities. They are:

- **The Estate Agent** – he is instructed by the seller of the property and whilst he has a responsibility to treat you as a prospective buyer fairly, his client, and the person paying for his services, is the seller. As such the agent is legally required to look after the best interests of his client. The agent has no control over the legal process but will generally assist in checking on the progress of your purchase and, if agreed, in handing keys over on completion of the sale.
 - **The Mortgage Provider** – if you require a mortgage to buy the property you may be dealing with a bank or building society, either directly or through an adviser. The agent is not allowed by law to give you any financial advice but he might refer you to an adviser with which he has links or which is a separate part of the same company. The agent will not have access to the records of the mortgage provider or adviser and has no control over the progress of any mortgage application.
 - **The Surveyor / Valuer** – he may be engaged directly by you or by the mortgage provider and will offer various levels of survey from a general examination to a detailed structural survey. Unless the mortgage provider specifies otherwise it is your choice as to the depth of survey undertaken but the greater the detail required, the greater the cost to you.
 - **The Legal Representative** – should you choose to use one will be either a Licensed Conveyancer or a Solicitor and will progress the formalities of the sale and will determine with you the dates for exchanging contracts and for completion.
- When dealing with an agent you should:**
- Ensure that when you discuss making an offer on a property you make clear to the agent whether you are simply establishing what a realistic offer might be (and at that stage is not to be passed on) or whether you are submitting a formal offer. The agent should confirm your formal offer in writing to you and whether the seller has accepted that offer.
 - Ask to see the Energy Performance Certificate for the property and ensure that a copy is made available to you if you are seriously considering purchasing the property in question.
 - Be aware that you are not required to use any associated service which is offered by the agent. You are perfectly entitled to use your own financial adviser, legal representative (unless you wish to do your own conveyancing), or surveyor if you wish a more detailed examination of the property than the lender undertakes.
 - Be aware that agents are legally bound under the Property Misdescriptions Act 1991 and the Consumer Protection from Unfair Trading Regulations 2008 to describe a property truthfully. Sales particulars will give a general description of the property and will highlight, for instance, the type of heating, double glazing installed, or appliances or furnishings that may be included in the sale. The agent will not have tested any facilities but if these are of particular importance to you it is wise to question the agent further and he can ascertain the relevant information from the seller on your behalf.

In particular you should understand that:

- The agent is working for his client, the person selling the property.
- It is the seller who decides whether to accept an offer, to reject an offer, when to stop marketing the property after an offer has been made, and to whom he will sell the property at what price. The agent can only guide the seller in this regard, it is not his decision.

Essential Guides



Guidance for Consumers (Sellers)

This guide highlights the most important matters to be considered and to be aware of when entering into an agreement with an estate agent to sell a property.

All agents displaying The Property Ombudsman logo will be following a comprehensive set of standards laid down in the TPO Code of Practice, a copy of which can be obtained from any member agent or from the website at www.tpos.co.uk. It can also be obtained from the Ombudsman's office (telephone 01722 333306) where further assistance can be given if you feel you have been disadvantaged by an agent.

A general guide for consumers (Consumer Guide) is also available from the same sources.

You should also understand that there may be several different people with whom you will have contact during the sale of your property, each with different responsibilities. They are:

- **The Estate Agent** – he works for you as your agent and will market your property. He will show people round your house (unless you have agreed otherwise), advise you of any offers received and notify your legal representatives when you have accepted an offer and wish to proceed with the sale. The agent has no control over the legal process but will assist you in checking on progress of the sale and as agreed in handing keys over to the new owners.
- **The Energy Assessor** – he will draw up the Energy Performance Certificate which you are required to have by law before marketing your house.
- **The Surveyor** – he will be engaged by the prospective buyer or their mortgage provider. His report is private to the buyer and will not be disclosed to you.
- **The Legal Representative** – should you choose to use one will be either a Licensed Conveyancer or a Solicitor and will progress the formalities of the sale and will determine with you the dates for exchanging contracts and for completion.

When dealing with the agent you should ensure that you understand:

- The basis of the agency being offered. This might be:
 - Sole agency which means that if contracts are exchanged with someone who your agent has introduced to the purchase the agent will be entitled to the fee.
 - Sole selling rights which means that if contracts are exchanged with someone who your agent has introduced or who was introduced by another agent or with someone you yourself introduced your agent will be entitled to a fee.
 - Multi agency which means that you have signed up with a number of agents and they will have agreed that the agent

who introduces someone to the purchase will be the one who is entitled to the fee. Note that multi agency fees are generally higher than for a sole agency.

- Ready, willing and able which means that if someone is prepared and able to purchase your property (even if an exchange of contracts does not occur) then the agent will be entitled to a fee.

- The fee that will be charged and whether that is on a sliding scale according to the actual sale price or on a fixed basis which will not vary regardless of whether your house sells for less or more than the asking price.
- How long the agreement runs for and how you can terminate it and with what period of notice.
- Whether you will have any continuing liability to the agent if you do terminate the agreement.
- The options open to you regarding the preparation of the Energy Performance Certificate and who will supply it and the cost.
- What will happen about 'For Sale' boards and whether the agent will accompany all viewings or is expecting you to do them.

In particular you should understand that:

- Realise that you when you sign the agreement you are entering into a legally binding agreement under which you will incur a financial commitment.
- Ensure that you have read and understood the terms of the agreement and the commitments you have entered into. Do not feel pressured into simply signing it and be aware that if you sign the document in your home or at your place of work you are entitled to cancel it within 7 days.
- Be aware that you are not required to use any associated service which is offered by the agent. You are perfectly entitled to use your own financial adviser, legal representative.
- Make sure that you receive copies of all relevant documents such as the agreement, any follow up confirmation of terms of business and the final sales particulars after you have approved them in draft form.

Essential Guides



Guidance for Consumers (Tenants)

This guide highlights the most important matters to be considered and to be aware of when dealing with letting agents when you are intending to rent a property.

All agents displaying The Property Ombudsman logo will be following a comprehensive set of standards laid down in the TPO Code of Practice, a copy of which can be obtained from any member agent or from the website at www.tpos.co.uk. A copy can also be obtained from the Ombudsman's office (telephone 01722 333306) where further assistance can be given if you feel you have been disadvantaged by an agent.

A general guide for consumers (Consumer Guide) is also available from the same sources.

You should also understand that there may be several different people with whom you will have contact whilst you are looking for and agreeing a tenancy. They are:

- **The Letting Agent** – he works for the landlord of a property in finding a suitable tenant. He will show prospective tenants around the property and will deal with the formalities of referencing and compiling the tenancy agreement. Whilst the agent has to treat you fairly he is required to look after the landlord's best interests because he is paid by the landlord for his services.
- **The Referencing Agent** – he might be employed by the letting agent to carry out the checks on you as a prospective tenant. He will provide a report to the letting agent as to the suitability or otherwise of you as a tenant based on the checks he has carried out.
- **The Tenancy Deposit Protection Scheme** – by law any deposit taken in relation to what is called an Assured Shorthold Tenancy, the commonest form of tenancy, must be protected by a government approved deposit protection scheme. The agent should advise you which scheme he is registered with and what arrangements have been made to protect the deposit. It may be necessary for the landlord to arrange protection.
- He has a duty to the landlord to take appropriate references on you. Generally, although not always, the letting agent will use a referencing agent to carry out this work and it is the referencing agent that provides a report which details your suitability or otherwise. Based on that report and other factors, the landlord will make a decision as to whether to rent the property to you. If you 'fail' referencing you may lose some or all of your holding deposit.
- If you require any action to be taken in regard to facilities at the property before you move in make sure that the conditions you have specified are written down and agreed by the landlord.

In particular you should understand that:

- Understand that the tenancy agreement is between you and the landlord. If any repairs or maintenance are needed to the property it is not the agent's responsibility. If the agent is managing the property on behalf of the landlord his job is to receive a notification from you and to pass that message to the landlord. It is up to the landlord to take the necessary action, all the agent can do is to check on progress but he should keep you informed.
- Be aware that if there is a dispute at the end of the tenancy and you cannot reach an agreement with the landlord as to any deductions you have the right for the matter to be referred to the relevant tenancy deposit protection scheme for independent adjudication. Note that there is a time limit of 14 days after the end of the tenancy.
- Be aware that when a tenancy comes to an end the agent or the landlord will arrange a check-out process comparing the state of the property against an inventory and check-in report. Wherever possible, to avoid unnecessary dispute, you should verify the check-in and attend the check-out and ensure you obtain a copy of the agreed status report.
- Make sure that you receive copies of all documents relating to your tenancy.

When dealing with an agent you should ensure that you understand:

- If you make an offer to rent a property the agent may ask you to pay a holding deposit. This is not the same as the tenancy deposit to cover any damage to the property. The agent should inform you in writing of the purpose of this holding deposit and in particular the circumstances under which it is repayable or forfeit.

Essential Guides



Guidance for Consumers (Landlords)

This guide highlights the most important matters to be considered and to be aware of when dealing with letting agents when you are intending to rent out your property.

All agents displaying The Property Ombudsman logo will be following a comprehensive set of standards laid down in the TPO Code of Practice, a copy of which can be obtained from any member agent or from the website at www.tpos.co.uk. A copy can also be obtained from the Ombudsman's office (telephone 01722 333306) where further assistance can be given if you feel you have been disadvantaged by an agent.

A general guide for consumers (Consumer Guide) is also available from the same sources.

You should also understand that there may be several different people with whom you will have contact whilst a tenant is being found. They are:

- **The Letting Agent** – he works for you in finding a suitable tenant. He will show prospective tenants around the property and will deal with the formalities of referencing and compiling the tenancy agreement. He may also offer to manage the property for you.
- **The Referencing Agent** – he might be employed by the letting agent to carry out the checks on the prospective tenants. He will provide a report to the letting agent as to the suitability or otherwise of the prospective tenant based on the checks he has carried out.
- **The Energy Assessor** – by law any property that is to be let has to have an Energy Performance Certificate. The agent might assist you to find an Assessor or you can arrange it yourself.
- **The Tenancy Deposit Protection Scheme** – by law any deposit taken in relation to what is called an Assured Shorthold Tenancy, the commonest form of tenancy, must be protected by a government approved deposit protection scheme. The agent should advise you which scheme he is registered with or whether you have to make arrangements yourself.

When dealing with an agent you should ensure that you understand:

- The basis of the agreement you have entered into with him. This might be for the agent to simply find you a tenant, carry out referencing and set up the tenancy agreement and arrange an inventory; or it might be for the agent also to manage the property on your behalf.
- How long the agency agreement runs for and how you can terminate it and with what period of notice, and whether you will have any continuing liability for any costs if you do terminate the agreement.
- The fees that will be charged for the services that the agent is carrying out for you. The fees might be collected as a single amount at the start of the tenancy or as a monthly deduction from rent received. Generally, costs associated with the tenancy agreement (such as referencing) are charged to the prospective tenant.

- The nature and frequency of visits that will be made by the agent to inspect the property. This will only apply if you have a property management agreement with the agent.
- What will happen about any 'To Let' boards and whether the agent will carry out viewings or he is expecting you to do them.
- Precisely what references have been obtained in relation to the tenant and whether any conditions were attached to the approval. The agent may be restricted on the detail he can provide because of Data Protection legislation but he should reveal to you any adverse comments from the referencing process to enable you to make an informed decision on whether or not to proceed.
- How and where the tenancy deposit will be held.
- What legal obligations you have as landlord in regard to gas safety and electrical installations. The agent can advise you but it is your responsibility to ensure that the property is safe.

In particular you should understand that:

- Understand that passing the referencing process does not guarantee that a tenant will always pay the rent and not cause damage to the property.
- Understand that the tenancy agreement is between you and the tenant and any breach of that agreement by the tenant, such as non-payment of rent, is a matter between you and the tenant. The agent should explain to you the limitations he has in regard to ensuring the tenant meets the tenancy obligations.
- Be aware that although the agent may receive and hold the tenancy deposit (and have it protected) you as landlord are, in law, responsible for repayment (subject to agreed deductions) at the end of the tenancy.
- Realise that when you sign the agent's agreement you are entering into a legally binding agreement under which you will incur a financial commitment.
- Ensure that you have read and understood the terms of the agreement and the commitments you have entered into with the agent. Do not feel pressured into simply signing it and be aware that if you sign the document in your home or at your place of work you are entitled to cancel it within 7 days.
- Make sure that you receive copies of all relevant documents such as the agreements with the agent and the tenant.



The Property Ombudsman

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