

# Guidance for Complainants



We have now considered the papers you have sent to us about your complaint. From what you have sent us, it appears that your complaint may be accepted for formal dispute resolution. You now need to complete our complaints form and this document is to advise you as to the process, what you can expect from this office and the options open to you.

## What the Ombudsman will do

The purpose of the Ombudsman's scheme is to resolve disputes in a fair, independent and informal way that provides an outcome that is in full and final settlement of all disputes between you and the agent. Whilst the Ombudsman takes into account legal principles, he does not take a legalistic approach. He is not bound by the same rules of evidence which apply in a Court. Neither can he take evidence under oath or cross examine people.

The Ombudsman may try to mediate a settlement by helping you and the agent reach an agreement to resolve your dispute. If that is not possible, he will review the documents provided by you and the agent to arrive at a resolution. If he supports your case he may make an award of compensation.

It could be that when we receive your complaints form, the Ombudsman may decide that your case is outside his remit. Should this happen, he will assist you in establishing what other options are open to you to progress the matter. If the Ombudsman does decide that he cannot deal with the dispute, he will tell you in writing with his reasons. However, you do have the opportunity to appeal that decision and if you are able to send him further valid information, he might change his mind and accept your complaint into the scheme.

In dealing with your dispute, he will keep you informed of progress. He may make further enquiries of you or others, he will provide you with a written decision and will explain what you need to do next.

## What cases the Ombudsman can and cannot deal with

The Ombudsman can only consider disputes against those estate agents who have joined the TPO scheme. Note that the actions of solicitors, licensed conveyancers, surveyors, or financial advisors are outside of the Ombudsman's remit.

The complaint must be about:

- a breach of law (this might be the Estate Agents Act 1979, the Property Misdescriptions Act 1991, the Housing Act 2004 or the Consumers, Estate Agents and Redress Act 2007, but of course other legislation can apply);
- a breach of the agent's obligations under any code of practice or any internal rules, procedures or statements of practice of the agent;
- unfair treatment;
- maladministration.

The dispute can be brought to the TPO by someone on your behalf, provided that it is clear to the Ombudsman why you have asked for that person to represent you.

The TPO is accessible to everyone who has a complaint concerning the service provided by member or registered agents that fall within the

Ombudsman's remit. If you have a particular need in the way in which we need to communicate with you, please tell us and we will do our best to help, depending on your needs.

There are also some time limits which apply when bringing a case to the Ombudsman. You have **six months** from the date of the agent's final viewpoint letter to make your complaint to the Ombudsman. We suggest that you do not delay sending in your papers to avoid overrunning this time scale.

The Ombudsman cannot consider your complaint if it refers to something that happened before the agent was a member of or registered with the TPO or more than 12 months before you complained in writing to the agent.

If you have received an offer of settlement from the agent, **that offer lapses on referral to the Ombudsman.**

## What happens now?

1. You should complete the complaints form as fully as possible and provide all the documents that you are relying upon to support your case. Guidance is given on the form to assist you with its completion. It is important that you make a clear statement of the issue or issues at dispute. It is not sufficient for you to make unsupported allegations against an agent. The Ombudsman will need some corroboration to enable him to consider such allegations.
2. You should send all your papers to the Ombudsman's office as soon as possible. You can submit these electronically but the Ombudsman will need to see any original documents where these carry, for example, signatures.

## What happens next?

3. When your complaints form is received, we will send a copy to the agent and we will ask for his file and a statement from him describing his version of events.
4. A case officer will consider the dispute by formally reviewing the documents presented by you and the agent. The case officer may make further enquiries of you, the agent or third parties. Further documents or information may be requested from you and/or the agent to assist with our investigation. The Ombudsman will draw his own conclusions if such information or documents are not provided by you and/or the agent. You will not be required to disclose documents which the Ombudsman is satisfied are protected by legal or professional privilege.
5. The case officer will compile a written statement of his findings and make a recommendation to the Ombudsman as to how the matter should be resolved. If your complaint is supported the case officer will also assess what level of compensation is appropriate bearing in mind the aggravation, distress and/or inconvenience you have suffered. He will also assess any quantifiable losses that have occurred as a result of the agent's actions or inactions for final confirmation by the Ombudsman. The final decision will always be made by the Ombudsman and confirmed to you in writing.

**What happens after the case has been considered?**

6. If your complaint is supported either wholly or in part the proposed decision will be sent first to the agent. He has 14 days in which to accept or to make a representation. Any representation made will be considered and incorporated as necessary into the proposed decision. The proposed decision is then sent to you, together with a copy of the agent's submission and those documents relevant to the Ombudsman's proposed decision, not previously seen by you. You will have 28 days in which to accept the proposed decision or make a representation. If you make a representation which persuades the Ombudsman to change his proposed decision, the agent will be given a further opportunity to comment.
7. If your complaint is not upheld either in whole or in part, you will be sent the proposed decision, together with a copy of the agent's submission and copies of those documents relevant to the Ombudsman's proposed decision, if not previously seen by you. You will have 28 days in which to accept the proposed decision or make a representation. If you make a representation which persuades the Ombudsman to change his proposed decision, the agent will be given an opportunity to comment.
8. Representations normally only affect the decision, if it can be shown that there has been a significant error in fact that would have had a material effect on the outcome; or if significant new evidence is presented which will have a material effect on the decision.
9. If the Ombudsman rejects the representation made by either party, he will advise that party in writing.
10. Any request for an oral hearing will be considered by the Ombudsman (or his appointed deputy) by reference to the nature of the issues to be determined and in particular the extent to which the complaint raises issues of credibility or contested facts that cannot be fairly determined by reference to documentary evidence and written submissions. In deciding whether there should be a hearing and, if so, whether it should be in public or private, the Ombudsman will have regard to the provisions of the European Convention on Human Rights. The Ombudsman will give reasons in writing, if he declines to grant a hearing.
11. When both sides have had the opportunity to consider a settlement, to make further representations and, where appropriate, any oral hearing has taken place, then the Ombudsman will issue his final decision in writing. You are not obliged to accept the proposed settlement or the final decision and if you do not do so, you are free to pursue your complaint through the Courts. There is no further internal avenue of appeal or further internal review of your complaint for either party once the Ombudsman has issued his final decision.
12. If you accept the final decision (whether after representation or not), the agent will be advised and he is required to pay you any award that the Ombudsman has determined within 28 days of being notified of your acceptance.
13. If you do not accept the final decision within 28 days, that decision will lapse and your case closed (unless there are exceptional circumstances).

**Awards**

14. The Ombudsman can direct that a firm takes a certain course of action to rectify the matter. This might include offering you an apology or encouraging him to revise his procedures such that future failings are eliminated.
15. In appropriate circumstances, the Ombudsman can make an award in your favour by way of compensation for the actual proven financial loss that you might have incurred as a result of the agent's actions or inactions. The Ombudsman can also make an award for the aggravation, distress and/or inconvenience you have suffered over and above that inherent in the selling or buying of a property.
16. The Ombudsman can make awards up to a limit of £25,000. In practice, however, most awards are for less than £500.
17. You should note that by accepting the Ombudsman's award you are doing so in full and final settlement of your dispute with the agent and you will be asked to sign your agreement to that effect. Therefore if you wish to pursue your case through the Courts you must reject the Ombudsman's findings in their entirety.

**Points to note**

- (a) If you are a seller, your contract with the agent usually requires you to pay a fee if the agent introduces a buyer who goes on to complete the purchase of your property, irrespective of the level of service offered. If you refuse to pay that fee the agent has a legal right to take you to Court. Whilst some agents may be prepared to wait until the Ombudsman has reviewed the case, no agent is obliged to do so. If you do not pay the fee and the agent commences legal action against you to recover the same, the Ombudsman will suspend his review pending the Courts decision. The Ombudsman will then only be able to consider aspects of your complaint not considered by a Court of law. Accordingly, there is an expectation that you will pay the fee, or any uncontested part of it, on a 'without prejudice' basis if appropriate, to avoid action being taken by the agent.
- (b) Abridged and anonymised versions of case summaries appear on our website and may be used in the Ombudsman's Annual and Quarterly Reports. Details of complaints may, in accordance with the requirements of the Consumers, Estate Agents and Redress Act 2007, be provided to other approved redress schemes, other consumer redress schemes, the OFT or any other person exercising regulatory functions in relation to the activities of persons engaging in estate agency work e.g. trading standards officers. No personal details or details of specific aspects of the case will be given to anyone else outside of the TPO without your consent.
- (c) Subject to the provisions of his Terms of Reference, the Ombudsman shall, at his own discretion, decide the procedure to be adopted by him in considering complaints. He may therefore vary the procedure set out above but he cannot exercise his discretion to remove any rights given to you by law.
- (d) If you are dissatisfied with the way in which we have handled your complaint, you should bring your concerns to the attention of the Ombudsman. If you remain dissatisfied, you may raise your concerns with the Independent Reviewer. His remit is to consider complaints about our service and not about the merits of the Ombudsman's decision. Full details of the Independent Reviewer's remit can be found on our website [www.tpos.co.uk](http://www.tpos.co.uk) or requested from this office.