

# Guidance - the TPO Process



## What will the Ombudsman do?

Once it is established that attempts to resolve the dispute between you and the complainant have failed, the Ombudsman will then look into the dispute and seek to resolve it in full and final settlement.

In a minority of disputes, it may be possible within the Ombudsman's office, to seek an early resolution of the dispute through mediation. We help you and the complainant to reach a settlement that you can both agree on. There are three points during the complaints consideration process when this might occur:

- when the Ombudsman's office is first informed by the complainant that there is a dispute
- when we formally receive the complaints form
- once we have received your file

The dispute will not have been reviewed by the Ombudsman at this stage.

However, the majority of disputes will be resolved by a case officer undertaking a formal case review and presenting his recommendations to the Ombudsman. The final decision is always made by the Ombudsman and will be confirmed to you in writing. Where the Ombudsman supports the complainant, he may also consider an appropriate award of financial compensation, which is binding on you if the complainant accepts the Ombudsman's decision.

## How do we present our side of the case?

We will send you a copy of the complaints form which sets out the complaint(s) made against you and ask for your file and your version of events.

We strongly recommend that you do this under a covering submission letter, an example of which is at the end of this leaflet. The closer you can comply with the draft, the more likely you are to present the totality of your case.

## What level of proof do we have to provide?

The content of your file is the key. What you send us should be the complete file of the transaction. We will expect to see the following documents:

- market appraisal form
- agency agreement
- viewing records
- sales particulars
- offers made
- memorandum of sale
- copies of all correspondence between you and the complainant and other relevant parties during the transaction
- invoice

Of particular importance is your contemporaneous written record of the monitoring of the sale and the contact you had with the complainant and other relevant parties, sometimes called "sales progress notes".

If you are unable to provide such evidence in support of your actions, it is more likely that the Ombudsman may accept the complainant's version of events.

## What happens next?

A case officer will then undertake a formal review of the complaint. This will be based upon the papers provided by both parties, but he may also make other enquiries and ask for further documents or evidence. The case officer will then present his recommendations in a written case review to the Ombudsman for his proposed decision. That proposed decision may be:

- to support the complaint
- not to support the complaint
- to propose a settlement.

## What if we have made an offer to the complainant?

Any offer lapses on referral of the complaint to this office. The Ombudsman will come to his own conclusion as to whether or not that offer represents appropriate compensation for the complaint.

## How will the Ombudsman judge the complaint?

The Ombudsman will be influenced by the evidence that he sees and will be guided by best practice. Whilst the Ombudsman takes into account legal principles, he does not take a legalistic approach. He is not bound by the rules of evidence which apply in a Court and cannot take evidence under oath or cross-examine people. For those agents who subscribe to the Code of Practice on a voluntary basis, then the Ombudsman will be guided specifically by that Code in judging the complaint. He will always try to use common sense and arrive at a decision based on what seems to him to be fair and reasonable in all the circumstances.

## What happens if the Ombudsman supports the complaint?

The case review with the proposed decision is first sent to you.

## What if the Ombudsman does NOT support the complaint?

The case review with the proposed decision will be sent to the complainant first together with a copy of your submission and those documents relevant to the Ombudsman's proposed decision, that the complainant may not have previously seen.

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## What if we do NOT agree with the Ombudsman's proposed decision?

You can make a representation within 14 days. However, the Ombudsman will only re-consider his proposed decision if:

- you can show that there was a significant error in fact that would have had a material effect on the decision
- or you can produce significant new evidence that will have a material effect on the decision

The Ombudsman will take your representation into account and inform you of the result and, at the same time, send the case review to the complainant for acceptance or representation of his proposed decision together with a copy of your submission and any relevant documents that he may not have previously seen.

Having considered any representations made, the Ombudsman will make a Final Decision.

Please note that the TPO process is designed so that complaints start and finish with the Ombudsman. Having made a Final Decision, there is no avenue for appeal or further review of the complaint, for either party.

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.

## What can the Ombudsman do?

First, he can criticise you for any failings or breaches of the Code of Practice if it applies to your agency and direct that you change your practice.

Secondly, he can make an award to the complainant (of up to £25,000) for:

- actual, proven financial loss
- any avoidable aggravation, distress and inconvenience, over and above what is a stressful and inconvenient process at the best of times

Thirdly, he can direct that you take, or desist from taking, such steps as he may specify including the issuing of a formal apology to the complainant.

## Awards

The range of awards made over the last three years is:

£1-99	168
£100-499	747
£500-999	226
£1,000-2,999	123
Over £3,000	43

## What is the likely outcome?

If the complainant accepts the award, he/she does so in full and final settlement of all the complaints against you upon which the Ombudsman has made a formal judgement. The decision is binding upon you and you will be required to pay any financial award or carry out any directions that the Ombudsman may make within a reasonable time, usually 28 days. You are also required to inform this office when you have made payment or put into effect the Ombudsman's directions.

If the complainant does not accept the Ombudsman's decision, he/she is free to pursue their complaint elsewhere, without prejudice to anything decided by the Ombudsman. However, in that case, you will also be free to pursue any claim you may have for any outstanding commission fee.

## Further information

Our case reviews and the Ombudsman's decisions remain strictly confidential between you, the complainant and the TPO office. Details of complaints may, in accordance with the requirements of the Consumer's, 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 eg 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.

We do, however, publish abridged and anonymised case summaries on our website and in the Ombudsman's quarterly and annual reports.

If you are dissatisfied with the way in which we have handled the 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 the office.

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date:

Dear Mr Hamer,

## **Complaint by Mr and Mrs X**

We have received a copy of the TPO complaints form from your office outlining the complaints made by Mr and Mrs X.

Please find attached:

- The branch file dealing with this transaction.
- Our investigation into the complaint.

### **Our Investigation of the Complaint**

- **Branch Level.** Mr and Mrs X raised their complaint with the branch on 5 June. The Branch Manager acknowledged this on 7 June, and responded on 17 June.
- **Regional Level.** Mr and Mrs X raised their complaint with the Regional Director on 19 June. The Regional Director acknowledged this on 22 June, and responded on 5 July.
- **Head Office.** Mr and Mrs X raised their complaint with the Head Office on 7 July. Head Office acknowledged this on 9 July, and responded on 20 July with our final viewpoint letter.

### **Summary of individual complaints**

1. Mr and Mrs X have complained that xxxxxx.  
Short explanation – eg we have acknowledged some shortcomings in the provision of xxx but believe that xxx.
2. Mr and Mrs X have complained that xxxxxx.  
Short explanation – eg we refuted the allegation (cite evidence), as you can see at flag A on the branch file.
3. Mr and Mrs X have complained that xxxxxx.  
Short explanation – eg we admitted to an error. We apologised and made a goodwill offer of £xxx which was not accepted.
4. Mr and Mrs X have complained that xxxxxx. Please note. This complaint has NOT been previously referred to us.  
Our comment on this complaint is as follows:

### **Case history (something along the lines of)**

12 March 2005	We were invited to carry out a market appraisal. Recommended £200,000.
13 March	Mr & Mrs X (Seller) signed a sole agency agreement at 1.5% (plus VAT) at an asking price of £200,000.
24 March	Miss Y viewed property.
28 March	Miss Y made an offer of £190,000. Not accepted by seller.
2 April	Miss Y increased offer to £195,000. Accepted. She has no property to sell.
4 April	Memorandum of sale sent to both parties and solicitors.
8 April	Mr Z made an offer of £197,000. He has not yet sold his property.
9 April	Seller accepts Mr Z's offer. Miss Y informed. Memorandum of sale issued.
10 April	Miss Y made offer of £198,000. Accepted – Memo of sale issued. Exchange date of 30 May tentatively agreed. Miss Y arranges survey.
18 April	Miss Y receives survey report – down-values property to £195,000. Miss Y reduces offer to £195,000. Seller informed. Mr Z not yet found buyer.
19 April	Seller accepts Miss Y's revised offer
26 May	Miss Y withdraws from sale. Seller informed. Mr Z contacted – sold his property – and confirms his interest at £198,000. Seller accepts – if exchange date of 30 May can be achieved.
3 June	Exchange of contracts and completion simultaneously.
3 June	We submitted our invoice for £2,970 (plus VAT) – which was paid on xxx/which remains unpaid.
5 June	Letter of complaint from Mr and Mrs X.

### **Summary (something along the lines of)**

We believe that we did all we could with this sale for Mr and Mrs X. We made some errors, admitted them and apologised accordingly. We made a good will offer of £xxx.

However, we totally refute their allegation that we xxxxx.

We believe the key to this complaint is xxxxx. The important pieces of evidence are flagged at A, B and C on the branch file.

In the final analysis, the property came on the market on 13 March, and we found an acceptable buyer on 2 April who later withdrew from the sale on 26 May. We then found a new buyer who went on to exchange on 3 June. We believe that we are contractually entitled to our commission fee – which has /has not been paid. Our goodwill offer of £xxx still stands/has been withdrawn.

