

Oral Hearings

This is a guide as to how oral hearings fit into the review processes of The Property Ombudsman. It is intended both for those Registered Firms of The Property Ombudsman scheme and those Complainants who have requested, or are thinking of requesting, an oral hearing.

It is also intended to give practice guidance to the staff of The Property Ombudsman scheme as to the hearings process should an oral hearing request be made.

The Ombudsman resolves most complaints on the basis of written evidence and submissions, without the need for face to face meetings. However, he will consider a request for an oral hearing having regard 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 fairly be determined by reference to the evidence and written submissions provided or obtained in the course of his investigation.

The Ombudsman may at any stage prior to issuing his Final Decision decide that a complaint raises such issues of credibility or contested facts that it cannot be fairly determined except through the courts. In that case he will discontinue his investigation of the complaint in its entirety and no Final Decision will be made.

A brief explanation of The Property Ombudsman complaint review process

In the majority of cases the Ombudsman proceeds to his Final Decision without the need for a hearing. Each case is initially reviewed by a Case Officer who prepares a case review for the Ombudsman and from which the Proposed Decision is made. Case Officers do not hold oral hearings. As part of The Property Ombudsman process either party is able to make representations regarding the Ombudsman's Proposed Decision. The Ombudsman will consider all the evidence and arguments submitted. It is most frequently at this stage that the possibility of a hearing is considered. The purpose of any hearing is to assist the Ombudsman in establishing and clarifying issues in connection with deciding the outcome of the case, that cannot be determined from the evidence and written submissions available to him in the course of his investigation.

At what stage should a request be made and when would a hearing be held?

A request for an oral hearing can be made at any time before the Ombudsman has issued his Final Decision. The request can be made by either the Registered Firm or the Complainant. It must be in writing and state the issues to be determined at any oral hearing and the reasons for the request.

The most appropriate time would be after the party making the request has seen the Ombudsman's Proposed Decision. This is because, if the Ombudsman agrees to the request for an oral hearing, it will take place after the Ombudsman has sent his Proposed Decision to the party making the request and before he issues his Final Decision on the complaint.

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If the request is agreed, the Ombudsman will then write to the other party so informing them and giving his reasons, together with a copy of the Proposed Decision (if the other party has not earlier seen the Proposed Decision), and a copy of the request and supporting reasons.

A request for an oral hearing after the Ombudsman has concluded the review process and has issued his Final Decision will generally be refused. This is because each party has had the opportunity to represent against his Proposed Decision and is free to request an oral hearing at any stage of the review process. Therefore any request to reopen a case would only be considered in exceptional circumstances where there is a clear indication that a significant error of fact was made in the Final Decision or that material information which was not available during the review process has come to light which may render the Ombudsman's Final Decision inappropriate. A request to hold an oral hearing in such circumstances would only be agreed if the new information or error of fact raises issues which cannot fairly be determined on the basis of the evidence and written submission then available.

If you want an oral hearing, you will need to:

- *Put your request in writing, setting out the issues you wish to raise, so that the Ombudsman can consider whether they are material to his Final Decision.*
- *Understand that any hearing will be held in public. If you feel that the hearing should be in private, you must give your reasons.*

If a request is made for an oral hearing, The Property Ombudsman staff will have regard to the following practice guidelines:

- *Can be from the Complainant or the Registered Firm.*
- *Can be at any stage in the process, but preferably post Proposed Decision stage.*
- *Check that the parties understand The Property Ombudsman process for dealing with complaints.*
- *Consider whether clarification of our process is all that is required or whether any assistance is needed.*
- *Ask for the request to be put in writing with reasons.*
- *Explain that any request will be considered by the Ombudsman and he will give his reasons in writing for either agreeing to or not agreeing to the request.*

How does the Ombudsman decide when to agree a request to hold an oral hearing?

The Ombudsman is under no obligation to hold an oral hearing. The party wanting an oral hearing must put their request to the Ombudsman in writing explaining why they want a hearing and what points or evidence they plan to raise.

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The Ombudsman will consider the request but will only agree if in his view the case cannot fairly be determined on the basis of the documentary evidence and the material provided or obtained (oral and written). Before agreeing, he will inform the other party and give them the chance to comment on the request.

If the Ombudsman refuses the request he will write to the party making the request explaining his reasons.

Where he decides to hold a hearing he will invite both parties to attend.

If a written request is received, the Ombudsman and The Property Ombudsman staff will have regard to the following practice guidelines:

- *Review reasons for request.*
- *Can the complaint be resolved from the documentary evidence submitted?*
 - *If yes, staff will recommend that the request is rejected.*
 - *If no, consider the likely benefits of the hearing and recommend accordingly.*
- *Consider if third party or further enquiries would clarify the points at issue?*
 - *If yes, make those enquiries and subject to the outcome of those enquiries staff will assess whether to recommend that the hearing request is accepted or rejected.*
 - *If no, staff will recommend the hearing is granted.*
- *Consider whether the matter should more correctly be dealt with by the courts and, if so, recommend the hearing is rejected.*
- *If the hearing is recommended, before informing the requesting party, the other party needs to be informed and given the opportunity to comment on the request.*
- *The Ombudsman considers the request and if appropriate the other party's view and decides if a hearing is granted or not.*
- *If rejected the Ombudsman writes to the party requesting the hearing giving reasons for rejecting the hearing. The other party will be simply informed that the request has been rejected.*
- *If granted, the Ombudsman will write to both parties with reasons for granting the hearing.*
- *The Ombudsman considers any requests for the hearing to be held in private and decides whether to agree to that request.*

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How the review of a complaint by the Ombudsman differs from a court hearing

The Ombudsman's Terms of Reference require that complaints are resolved impartially, fairly and informally.

The Ombudsman deals with complaints differently from the courts and the procedures are informal. His investigations are inquisitorial in nature, not adversarial, and his decisions are made with a view to promoting a settlement of a dispute. He is not an industry regulator, he does not impose penalties if he upholds a complaint and it is not his role to carry out an enquiry into what may have gone wrong with a view to making directions as to future conduct. He makes his decisions having regard to legal principles but does not determine points of law. His decisions consider whether the Registered Firm in question has complied with the relevant Code of Practice, and he reaches his conclusion based on what seems to him a fair and reasonable outcome in the circumstances. His awards are strictly to compensate a Complainant for any loss or expense and/or aggravation, distress and/or inconvenience they can demonstrate they have suffered as a result of the Registered Firm's shortcomings.

He cannot take evidence under oath, and this limitation is reflected in all his decisions, in that he may decline to take a formal view where evidence is disputed. This limitation applies in an oral hearing just as it applies in a case where no hearing is held.

Where are oral hearings held?

When a hearing is to be held, the Ombudsman will endeavour to set a date which is convenient to both sides. Hearings are held at his offices (or nearby premises) in Salisbury unless there are very good reasons for it to be held elsewhere. A written request for a hearing to be held elsewhere must be made stating the reasons. The Ombudsman will take into consideration significant travel difficulties or ill health of any party.

Unless the Ombudsman decides otherwise, the hearing will be held in public. This means that although the hearing will not be publicised, members of the public or press may attend.

The Ombudsman will restrict the evidence and arguments to the points that are material to his Final Decision. Before the hearing, the Ombudsman will set a date to determine the issues for consideration at the hearing and for exchange of the evidence/documents to be relied on at the hearing. The Ombudsman may at this stage determine that the issues which a party wishes to raise and/or evidence and documents are not material to his decision in the case. If so, such issues cannot be raised at the hearing nor such documents/evidence relied upon.

A meeting may be necessary to do this and also to set a hearing date.

Before an oral hearing is held, both parties must provide when asked by The Property Ombudsman staff:

- *A list of anyone who will be taking part on their behalf, including any legal representative.*

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- *How long they believe it will take to present their evidence and arguments.*
- *The dates when they and any witnesses cannot attend.*
- *A list and copy of any documents they wish to raise at the hearing together with a summary of any points they intend to make at the hearing.*
- *Witness statements from any witnesses they wish to give evidence on their behalf. Such statements do not need to be sworn but must contain the witnesses full name and be signed by them in front of an independent witness.*
- *A list of any questions they wish the Ombudsman to put to the other side at the hearing.*

If an oral hearing request is granted, the following practice guidelines will be followed by the Ombudsman and The Property Ombudsman staff:

- *The Ombudsman's Personal Assistant will ask for the information, lists, witness details, and copy documents referred to above and arrange the hearing and any preliminary meetings.*
- *The Ombudsman or his Personal Assistant on his behalf will write to the parties informing them of the date, time and location of the hearing, and if it is to be held in private.*
- *The Ombudsman will also consider and write advising of any evidence/documents he has determined as not material to his decision.*
- *The Ombudsman or The Property Ombudsman staff will send copies of the witness statements, and documentary evidence to the other party before the hearing.*
- *The Property Ombudsman staff will inform the other party if one of them indicates that they intend to use a solicitor at the hearing.*

What happens at an oral hearing?

As already mentioned, the hearing will be informal though it will follow a process and the Ombudsman has the right at any time to declare the hearing closed and refuse to reopen it if either or both parties fail to follow his directions for the efficient conduct of the hearing. The Ombudsman will introduce the parties and summarise the complaint and the issues for consideration at the hearing. Each side will (in turn) have the opportunity to put forward their views and evidence. They will also in turn have the chance to put questions to the other party through the Ombudsman. He too will ask questions which he considers relevant and/or with a view to seeking clarification of any issues.

He may use a solicitor or barrister to ask questions for him but this is not usual.

After each side has had the chance to question the other, the Ombudsman may then ask more questions before inviting both parties to make any closing statements.

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The parties must know that they must not interrupt each other. A time limit may be set by the Ombudsman for each stage of the hearing.

The purpose of the hearing is to allow the party requesting the hearing to test any adverse finding or evidence. It is not to reconsider the case in its entirety. No party will be able to raise issues which have not been previously determined as those for consideration at the hearing or seek to rely on evidence/documents which have not been exchanged with the other party.

Since oral hearings are not like court actions, and are informal, neither party is required to have legal representation. If a party wants their lawyer to attend, the Ombudsman will facilitate this but the party in question must expect to pay for their legal representation. If one of the parties arrives for the hearing with a legal representative having given no prior indication of such intention, and the other party is unrepresented, the Ombudsman may defer the hearing to allow the other party time to engage a lawyer.

The Ombudsman would only consider making an award to a Complainant for legal costs if satisfied either that it was absolutely necessary in order to allow the Complainant to put forward their case effectively or if the Registered Firm indicates that he will have legal representation, and the Complainant chooses to be legally represented after being so informed. If that is the case, the Registered Firm will be required to meet the reasonable legal representation costs of the complainant to ensure balance.

The Ombudsman has no power to award costs to Registered Firms. He will ensure that the hearing is fair to both parties, and may have advisors at the hearing to assist him.

The hearing will be recorded and a copy of the recording will be provided on request.

What happens after the hearing?

The Ombudsman will not normally give his Final Decision at the hearing. The Ombudsman will review the file and consider all the evidence. He may seek further clarification in writing and undertake further investigations. He would normally expect to issue his Final Decision and send it to both sides at the same time within 10 working days of the hearing. No further representation will be allowed. The Complainant will then have a further 10 working days to indicate if they accept or reject the Final Decision. If accepted, the Decision will be binding on both parties in full and final settlement of their dispute and the Registered Firm will be informed so that the compensatory award can be paid.

Limitations on these guidance notes

This is a quick guide for general information on the Ombudsman's procedures for an oral hearing. It is not intended as a definitive statement of the law governing this aspect of the Ombudsman's work.

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Document Code	
TPOE59-1	
Issue 2	Page 8 of 8

Complaints about the processes and procedures of The Property Ombudsman scheme

Any complaint regarding the processes and procedures of The Property Ombudsman should not form part of the hearing (there is a separate procedure for dealing with any complaint about the way in which the Ombudsman has applied his Terms of Reference).

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