



# Christopher Hamer, The Property Ombudsman, suggests that talking to your clients can avoid complaints.

mentioned in a recent article the importance of regular communication between agents and consumers. I repeatedly see cases where the agent's failure to communicate adequately or at all has severely disadvantaged the complainant and I wanted to highlight a few of these cases. I also consider that clear and precise communication must go hand in hand with the keeping of detailed progress notes in order that the agent has evidence that they regularly communicated with the complainant.

I dealt with a case recently where a property was being marketed on behalf of the seller complainant. An indication of whether or not a property is priced keenly is the interest it attracts but, during five months of marketing, no viewings were conducted. There was no evidence within the branch file to show that the marketing strategy was discussed during this period, or that the need for a price reduction was mentioned, until the complainant emailed the branch to complain about the lack of contact. At that point, the branch representative visited the property and a price reduction was agreed.

Paragraph 2c of the TPO Code of Practice requires an agent to keep their general marketing strategy under regular review with their client. I was extremely critical of the agent in this example in that no attempt had been made over a five month period to regularly review the marketing of the property and suggest price reductions in the light of the deteriorating market and lack of viewers. Consequently I upheld the complaint concerning communication failures and made an award in respect of the aggravation caused to the complainant.

I receive a significant number of cases

**“The lesson to be learned, is that regular communication, however arduous it might be, is of the utmost importance.”**

concerning dual fee situations. Leaving aside the issue of introduction, the aspect that I often have to consider is whether the agent has advised the complainant that he may incur the possibility of incurring two fees. Failure to do so may place the complainant in the situation of proceeding with a second agent, unaware of the potential increased liability. Under the TPO Code I expect any agent to fully explain to their seller client, at the point of instruction, that there may be a dual fee liability if they have previously instructed another agent to sell the property or if they chose to instruct another agent during or after the period of agency with the first agent. This obligation is clearly set out in Paragraph 3m. Additionally, under Paragraph 3n, at the time of termination, an agent must explain, in writing, any continuing liability a seller may have to pay a commission fee, or the circumstances in which he may have to pay more than one fee. I have seen cases where no such warning has been put in writing but the agent advises that, on dis-instruction, he had verbal discussions with the seller. While this may be the case, it is not sufficient to satisfy the requirements of the Code and, furthermore, an agent is often in difficulties when called upon to prove that

such conversation took place. Although it is not my role to alter the contractual entitlement, I will make an award if the agent's actions have resulted in the complainant proceeding, not fully being aware of the consequences of the situation, and hence being severely disadvantaged.

Finally, I wanted to mention one recent lettings case. The complainant (the tenant) complained that the agent had misrepresented the extent of the works required at the property prior to her entering into the tenancy agreement. The complainant also asserted that the agent's communications regarding the maintenance and repairs were not adequate and that, as result, the required works were not carried out when they should have been, leaving her and her son to inhabit a damp and mouldy property, without central heating, during the winter months, which had an effect on their health. I found that, while the agent had stated that they dealt with all maintenance issues promptly and efficiently, they failed to provide any evidence to support their argument. While I was unable to establish the extent of the works required as conveyed to the complainant prior to the tenancy starting, due to the lack of an inventory and the property's marketing particulars, I did support the complaint concerning communication, as well as noting several serious complaint handling failures. I made an award of £300.

Lessons to be learned: regular communication is of the utmost importance; marketing should be kept under review and detailed records kept of all conversations within the progress notes. ☺

 Do you have any views or experiences to share?  
[www.propertydrum.com/articles/ombudsmanfeb10](http://www.propertydrum.com/articles/ombudsmanfeb10)