



Christopher Hamer, The Property Ombudsman, gives his views on Commission Fee Entitlement.

In previous articles I have commented on an agent's entitlement to pursue a commission fee. An agency agreement will normally stipulate that the agent must either introduce the buyer or carry out negotiations during the sale in order to claim entitlement. It will usually be fairly straightforward to determine entitlement although issues can arise in determining whether an agent has introduced the Buyer, normally in cases where one agent is claiming that they introduced the buyer, a second agent has advised that they have negotiated the sale and the seller is facing a dual fee claim.

I am aware that there has been much comment on the recent ruling, in what is now known as the Foxtons case, concerning an agent's entitlement to a commission fee. The cases that are brought to this Office reflect ongoing confusion, among both sellers and agents, as to what an agent is required to show to satisfy their commission fee entitlement. If an agent is basing their contractual entitlement to the fee on the fact that they introduced the buyer, I will expect to see documentary evidence that the agent was indeed the 'effective' cause of introduction. I do not consider that merely handing property particulars to a prospective buyer, or conducting a viewing where the viewer expressed no interest in the property and did not, at that time, make an offer, will be sufficient to establish that the agent's actions resulted in the sale of the property. However, if the agent can provide detailed progress notes showing that the potential buyer was interested in the property and wanted to go ahead but was unable at the time, for whatever reason, but the agent kept in contact, trying to establish the sale, then it is likely that I may conclude that the

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agent was the effective introducer, even if that buyer subsequently made an offer through another agent.

When considering such cases, I will not re-write agreed contractual terms in order to somehow reflect a seller's perception of fee entitlement but I will consider both the terms of the contract and the general ethos of the TPO scheme, that is, what is fair and reasonable in a specific situation. I have dealt with many cases concerning fee entitlement and am aware that an agent and seller may often disagree as to whether a fee is due. However, one case recently referred to this Office astounded me.

In this case, the Complainant was 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. The non-instructed agent, 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.

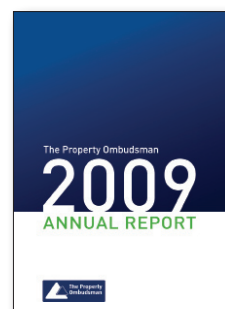
The agent's claim was considered to be totally without foundation. All member agents, on joining this scheme, give an undertaking to comply with the TPO Code of Practice, and in particular to act in accordance with best practice. There was no contractual agreement between the Complainant, as seller, and the agent and no basis whatsoever for the agent to claim a fee. A direction was made to withdraw the commission fee claim.

A continuing message from me therefore is that an agent must be able to show that they have complied with the terms of the agency agreement in order to claim a commission fee.

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Their Annual Report is full of information on the board and the management of TPO with a full review of the year, including statistics for numbers and types of complaints and the time taken to resolve them.

It is available to download at:
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