

PRR *update*

Private Rented Sector



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ASSET MANAGEMENT: FOCUS FEATURE

The Property Ombudsman on Redress

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My role as The Property Ombudsman (TPO) is to provide an independent facility for resolving disputes between firms which are registered with the scheme and buyers, sellers, landlords, leaseholders, lessees and tenants of property in the UK.

Fair & Independent Resolution

I am entirely independent of the agency sector being accountable to a Council which is likewise independent of those agents. Resolutions are designed to achieve a full and final settlement to the dispute and I can, where appropriate make an award of financial compensation up to £25,000.

Whilst there is no collation of statistics relating to the total number of residential housing transactions in the London market, it is likely that there will be many hundreds of thousands of lets each year and many thousands of sales. It is not surprising that the activity therefore generates a large number of disputes between landlords or tenants (or indeed prospective tenants) and letting agents; and between buyers or sellers and estate agents; and which are referred to me for resolution.

Figures from my 2010 annual report show that London and the South East of England generated 35 per cent of all the sales disputes handled (36 per cent in 2009) and 51 per cent of lettings disputes (51 per cent in 2009).

If I focus on Greater London agents specifically, nine per cent of sales disputes in 2010 came from the area compared with 14 per cent in 2009. Perhaps a slowing

market with fewer transactions has brought this about but I would like to think that agents are becoming more used to working in accordance with the Code of Practice for Residential Sales and are learning from the feedback I give.


Lettings Disputes

However Greater London provided my office with three times as many lettings disputes in 2010 when compared to sales, with 29 per cent of all the lettings disputes I dealt with coming from the region.

Although this was actually a two per cent drop compared with 2009 it is really quite a serious statistic with letting agents still (it appears) not fully operating to the standards defined in the *Lettings Code of Practice*.

Communication is Key

What I am finding is that the vast majority of disputes referred to me are not about malicious acts or deliberate attempts to disadvantage the consumer but result from poor communication. Communication failure was the largest single cause of complaints in 2010 for both lettings and sales. What generally happens is that the agent has not made clear his terms of business, precisely what level of service he will offer or what is expected of the buyer, seller, landlord or tenant. That allows those individuals to assume something, to misunderstand what will happen or expect that certain aspects of the transaction will proceed at a certain pace. I have often made the point that the agent is the professional in the transaction, it is his job to ensure that he properly describes (for



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LETTINGS

CODE OF PRACTICE

Code of Practice for Letting Agents

Effective from 1 October 2006

example) the basis of his fee and that the consumer understands all aspects of the service that he will provide.

Handling of complaints by agents is the second biggest cause of disputes referred to me. Again it is all about communication but if by the agent's actions he has already upset someone, he is just making the situation worse by not properly dealing with the complaint or being slow at offering a resolution (if that is what is needed).

Compulsory Redress for Lettings?

My real concern though is that there is no compulsion for agents operating in the lettings market to be part of a redress scheme. Residential sales agents are required by law (the Consumers, Estate Agents and Redress Act 2007) to be a member of such a scheme and this inconsistency causes confusion for consumers. I estimate 60% of agents are already members of TPO – that is good news but it does mean that the other 40%

are operating to their own standards and potentially could leave consumers exposed to poor practices (perhaps even lack of propriety when it comes to finances).

Increased Consumer Protection

For the last 18 months or so I have been pressing for this to change. In my annual report for 2009, issued just before the 2010 general election, I called for whichever Government arrived in Whitehall after the contest to do something to help increase protection for consumers who are involved in the lettings market. With the number of lettings properties in the capital and therefore the vast number of landlords and tenants, such a requirement would have real impact.

Fortunately for landlord and tenants, the number of lettings agents voluntarily joining TPO scheme continues to grow. These are firms that recognise the value of having in place a formal dispute resolution process for complaints they cannot settle themselves and who follow the standards in the TPO Lettings Code of Practice, which defines best practice and minimum standards in detail.

I am about to publish revised Codes of Practice for both sales and lettings. The Code of Practice for Residential Sales has received independent accreditation under the OFT's Consumer Codes Approval Scheme (CCAS). That is important for the credibility of the Code. For almost three years I, together with the management board of the scheme, have been trying to gain that same accreditation from the OFT for the Lettings Code of Practice. We are launching a revised version from 1 August, but regrettably without the stamp of the OFT upon it.

Research in late 2009 by OFT, showed that firms signed up to a CCAS scheme code were only half as likely to attract complaints as those who were not. At that time, the scheme had around 14,000 member firms following the various industry Codes that OFT had approved, of which half were residential sales agents.

Monitoring Service & Standards

One of the reasons the CCAS approval can provide credibility is because it requires random monitoring of firms that are signed up to the Code. At TPO we use a third party organisation to monitor agent standards (in our case this relates to sales agents only). Firms are selected at random and the last 10 buyers and last 10 vendors are then surveyed.

The value of this is two-fold. The first is that it keeps agents on their toes; the second

is that agents receive the results so they know where they are performing well and where they need to improve. This raising of professional standards is a vital part of my office's work. We want to diminish the causes of complaints (logic dictates they will never disappear altogether) through higher standards of service and the experience with sales agents appears to show this is working.

Whilst disputes have increased year on year, no doubt due to the increase to the number of firms registered with TPO, the average value of compensatory awards I have made following successful complaints has halved.

It's not unreasonable to want to apply the same system to lettings agents but the OFT's lack of application to the matter over the past three years has hindered this.

Appetite for Standards

As I write this in early June, there are 8,195 member lettings offices in TPO compared with 11,503 for sales. Compared with two years ago, the lettings figure has grown by 44 per cent. Bearing in mind that lettings agents do not have to enrol for any form of redress, it is clear that there is a huge number of lettings firms that want to be seen as offering the best standards of service and independent redress.

These lettings agents within TPO are enthusiastic supporters and I frequently get invited to industry forums and individual firms to talk about best practice. I am also initiating contact with the industry when I see new trends developing in disputes so that problems can be solved before they grow out of all proportion.

Holding Deposit Confusion

One of the newer trends in disputes is in relation to holding deposits, paid when a prospective tenant has successfully offered on a property and the referencing process is to start, generally with the property no longer being offered for rent. Potential tenants often don't understand the terms of the deposit and expect to get the money back if, for whatever reason, the tenancy doesn't proceed. Under the Code of Practice agents are required to provide prospective tenants with a written receipt detailing the purpose of the deposit and the terms of forfeiture where that is relevant. That process is designed so that the prospective tenant can be fully aware of their liability.

If a dispute is referred to me I will expect to see that the purpose and terms of the deposit have been clearly explained and if not I will likely find against the agent.

Holding deposits are widespread practice with the lettings industry, OFT guidance on such deposits (albeit published in 2005 and not tested in Court) makes it clear that any deduction from the deposit (even if the prospective tenant backs out) must be reasonable. I think it therefore not best practice for the agent to simply ask for (typically) £500 as a holding deposit and then if the tenancy does not proceed for the agent to keep the whole sum. The deposit should relate to specific costs and the terms of forfeiture (where that applies) should be made absolutely clear.

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Young London's First South London Hub in Southwark is Now Complemented by a New East London Hub at Canary Wharf