

Annual Report

2008

Ombudsman for Estate Agents



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The Scheme



The Ombudsman for Estate Agents (OEA) scheme in its current form was set up on 1 January 1998. It was originally established in 1990 as the Ombudsman for Corporate Estate Agents providing a facility to buyers and sellers of property being marketed by large corporate agencies, generally at that time, in the ownership of major financial institutions. Now, membership is open to all those firms with a principal, director or partner who is a member of the National Association of Estate Agents (NAEA) or the Royal Institution of Chartered Surveyors (RICS), to all corporate estate agents, to other independent estate agents who carry the necessary professional indemnity insurance and to lettings agents who qualify under any of the above categories.

The OEA provides an independent service for the resolution of disputes between member agents and buyers, sellers, tenants or landlords in relation to residential property in the UK. The OEA has authorisation under the Housing Act 2004 as an approved redress scheme covering disputes relating to Home Information Packs and in June 2008 gained the status of an OFT Approved Estate Agents Redress Scheme under the provisions of the Consumers Estate Agents and Redress Act 2007.

The Ombudsman is entirely independent of member agents and reports to a Council which is likewise independent of those agents. The Council appoints the Ombudsman and sets his terms of reference.

The Ombudsman provides a fair and impartial resolution of disputes which are referred to him and which fall within his terms of reference. Resolutions are designed to achieve a full and final settlement of the dispute and all claims made by either party and the Ombudsman can, where appropriate make compensatory awards in individual cases up to a maximum of £25,000 for actual and quantifiable loss and / or for aggravation, distress and / or inconvenience caused by the actions of a member agent. The Ombudsman will not normally review a case until the internal complaints procedure of the member agent has been exhausted. No charge is made to complainants for using the service.

The OEA has a Code of Practice for Residential Sales which has received OFT approval under its Consumer Codes Approval Scheme and all agents which are full members of the scheme for their sales business are entitled to display the OFT Approved Code logo in branches and on documentation to show that they adhere to the standards laid down in the code. There is also a Code of Practice for Lettings which contains similar standards for letting agents and OFT approval is being sought.

The Ombudsman's Terms of Reference, the Codes of Practice, Consumer Guides and other documents about the operation of the scheme are available from the OEA at the address shown below. They are also available on the OEA website (www.oea.co.uk) together with previous annual and quarterly reports, an explanation of governance arrangements and a full list of member agents.

Contact details:

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Beckett House, 4 Bridge Street
Salisbury, Wiltshire SP1 2LX

Telephone: 01722 333306 (general enquiries)
Email: admin@oea.co.uk
membership@oea.co.uk

Foreword by the Chairman of the Council



My foreword to the 2007 Annual Report recalled the passing into law of the Consumers, Estate Agents and Redress Act which made it compulsory for residential estate agents to belong to an approved redress scheme to investigate consumer complaints and to request compensation to be paid if that is just to do so. Our record over 20 years of providing such redress on a voluntary basis, demonstrating consistent success although its thoroughness and fairness, gave us confidence that the Office of Fair Trading's approval for our redress scheme would be forthcoming. Our governance and processes were examined with care by the OFT and approval was granted in the summer of 2008 in time for the commencement of the statutory system in October 2008. Membership of the OEA has increased though we are not the only redress scheme that has received statutory approval.

Current thinking in both government and the judiciary regards the courts as "the dispute resolution method of last resort," preferring less contentious methods of achieving redress. Statutory approval of our redress scheme is a boost to that approach. Informality and low cost are combined with justice in the individual case. We have appreciated that informal redress is needed not just in disputes between home owners and estate agents but also, for example, between landlords, letting agents and tenants. Even before the arrival of the current recession, many more property transactions have concerned houses to let and the Ombudsman's workload has been increasing in this field.

The task of the OEA Council is to support and encourage the Ombudsman in his important work and to ensure that his independence is supported in every way including the provision of adequate resources. The present Ombudsman Christopher Hamer has held office since 2006 and has proved his abilities both in his principal job of determining disputes and in increasingly ensuring customer satisfaction through publicising the scheme he administers. There is growing awareness of his work. The OEA Council comprises an independent Chairman but also a majority of members who are independent of the industry. One change in 2008 is that a valuable independent

consumer consultant specialising in financial affairs, Jane Vass retired after several years of helpful service on the Council. She has been replaced by Hilary Bainbridge who has had considerable experience of Ombudsman work in other fields. She has been the Waterways Ombudsman since 2005 and has had various roles with both the Parliamentary Ombudsman and the Local Government Ombudsman. She is a very welcome as a valued colleague.

Lord Gordon Borrie QC

Council Members



Hilary Bainbridge

Hilary Bainbridge is currently Waterways Ombudsman (dealing with complaints about British Waterways). She also works for other Ombudsmen and regulators as a consultant, and has been an Area Mental Health Act Commissioner. She was previously Deputy Local Government Ombudsman, a Director of Investigations for the Parliamentary and Health Service Ombudsman and Regional Projects Officer for the Audit Commission.

Lord Richard Best OBE

Lord Best is President of the Local Government Association: Chairman of the House of Lords Audit Committee: a trustee of the Royal Society of Arts: a Trustee of The Tree Council: Chairman of Hanover Housing Association: Chairman of The Giving Forum: Vice-Chairman of the All Party Parliamentary Group on Urban Development: Treasurer of the All Party Group on Homelessness and Housing Need: Vice President of the Town and Country Planning Association: Chairman of the Private Rented Sector Policy Forum: Member of the Audit Commission Housing and Regeneration Board. He has previously acted as Chief Executive of the Joseph Rowntree Foundation and as Chief Executive of the Joseph Rowntree Housing Trust: Deputy Chairman, Westminster City Council Standards Committee.

Peter Bolton King

Peter Bolton King is Group Chief Executive of the National Federation of Property Professionals (NFOPP). The Group comprises the National Association of Estate Agents (NAEA), the Association of Residential Letting Agents (ARLA), together with ICBA, NAVA and FOPDAC. He has over 35 years of experience as a Chartered Surveyor and Estate Agent both in the Independent and Corporate sector where he also had particular responsibility for 'best practice'. As the Association's principal spokesperson, he is frequently asked by the media for opinion on property related matters and Estate Agency. He sits as the NAEA representative on many industry and Government working parties and forums, and is in close contact with other European, American and Worldwide property Associations. He is Vice Chairman of the International Consortium of Real Estate Associations (ICREA).

Lord Borrie QC

Gordon Borrie was professor of English Law at the University of Birmingham 1969-76, Director General of Fair Trading 1976-92, and chairman of the Advertising Standards Authority 2001-07. He held various non-executive directorships after 1992 including at the Woolwich Building Society, and was

honorary president of the Trading Standards Institute 1992-97. He has written or co-authored various legal texts including "The Consumer. Society and Law" which went through four editions. He was made Honorary Life Member of the National Association of Estate Agents in 1992. He has been Chairman of the OEA Council since March 2007. Gordon Borrie was knighted in 1982 and made a Life Peer in 1995.

Noel Hunter

Noel Hunter currently chairs the Executive Board of the Trading Standards Institute, the professional body representing trading standards officers throughout the UK. He also serves as a Warden (Director) of the Birmingham Assay Office and as a member of the Board of the European Union sponsored EMARS project, co-coordinating market surveillance of product safety in Europe. He has also served as a Director of the National Consumer Council and the Banking Code Standards Board and as a member of the Financial Services Authority Consumer Panel.

Bill McClintock

Bill McClintock was appointed Chief Operating Officer for the Ombudsman for Estate Agents Company Limited (OEA) in January 2003. In addition to that role, he was appointed Chairman of OEA Limited from 1 January 2004. He has been connected with estate agency for 50 years and is a Fellow of the Royal Institution of Chartered Surveyors and a Fellow of The National Association of Estate Agents.

Mary Wilson-Jones

Mary Wilson-Jones is a Consumer Protection Consultant and, prior to her retirement in 2002, worked for 14 years on consumer protection issues at the Office of Fair Trading. There she specialised in all aspects of estate agency and also worked closely with the Trading Standards Service. She is an Associate member of the Trading Standards Institute.

Diana Wright

Diana Wright is a journalist specialising in Personal Finance. She was editor of The Sunday Times Money section for 10 years to 1995, and since then has been a regular contributor to the paper. She currently writes a weekly column dealing with readers' money problems and resolving their disputes with financial institutions. She is also a member of a review group moderating examination papers for the Institute of Chartered Secretaries and Administrators.

Secretary to the Council: Frances Hanks

Ombudsman's Report

for 2008

Introduction



As my office enters its 20th year of providing redress in the residential property sector a review of operations during 2008 will show that the Ombudsman for Estate Agents (OEA) scheme continues to expand and has consolidated its position in the Residential Property sector.

That expansion and consolidation has been mostly brought about by a single event, namely the acceptance of the OEA by the Office of Fair Trading (OFT) as an approved redress scheme under the Consumers Estate Agents and Redress Act 2007 (CEARA). I will cover this development in more detail later in my report but the immediate effect of the Act was to require all estate agents to join such an approved scheme from 1 October 2008. Our approval by the OFT was a recognition that our governance arrangements are robust and that our significant experience will continue to make an important contribution to dispute resolution where needed in the property sector.

As a consequence membership of the OEA has increased by 17% since the start of the year with not only new members signing up, but the vast majority of those that had previously signed up under the Home Information Pack (HIP) redress requirements now upgrading their membership to meet their new obligations. A word of caution is needed for any firm that has not yet taken action to upgrade membership as failure to do so could result in a £1000 fine as a result of Trading Standards action.

Whilst legislation developed during 2008 it was (and remains) of course the current market and economic situation that will have been the most important issue for all firms. Trends in my workload tend to follow about four to six months after a trend becoming apparent in the market. It is only now therefore that I am seeing a slowing in the number of sales disputes being referred to me although given that housing transactions are down by 60%, (a figure generally quoted in the press and supported by Land Registry data), I am surprised that my workload in this regard has not decreased more rapidly. Figures elsewhere in this report will show that for sales disputes, my workload has decreased by just 3% during 2008 compared to the previous year.

The other market trend feeding through to my workload and showing a rapid increase is the rise in lettings activity As firms transfer their operations into lettings and property management

and as more consumers choose to rent rather than buy, it is perhaps inevitable that more such disputes will arise that cannot be settled by the parties themselves. Increasing membership and enhanced awareness of my Lettings jurisdiction has meant that the number of Lettings disputes has increased by 200% during 2008. During 2009 I expect that this aspect of my jurisdiction will be the biggest area of my work.

In 2009 I also expect to broaden my jurisdiction still further. The OEA has been discussing with the National Federation of Property Professionals (NFoPP) the provision of dispute resolution services for individuals who have dealings with member firms of the Association of Residential Letting Agents (ARLA), the Institution of Commercial and Business Agents (ICBA) and the International Division of NFoPP. Many ARLA members will already be members of the OEA but I think that this initiative by NFoPP to align the provision of redress for its constituent divisions is constructive and forward looking. Later in this report I will allude to reviews and consultations that are 'live' in the residential property sector at this time and to the general view that there should be greater consistency and alignment amongst the various bodies in the sector. The NFoPP approach makes a positive contribution to that debate by seeking to establish a single port of call for any dispute that may arise between a consumer and any one of its members. I expect arrangements finalising the agreement will have been concluded by the time this report is published.

This step by NFoPP follows that taken by the National Approved Letting Scheme (NALS) at the start of 2008 requiring all its accredited firms to join the OEA. The move by NALS has also contributed to the idea of disputes in the residential property sector being dealt with consistently.

Included in this report for 2008 are statistics relating to workload, some messages which need to be highlighted based on the disputes that I have been asked to resolve, and some examples of case studies. These appear on pages 11 to 28.

Workload 2008

During 2008 I have continued to issue my quarterly reports which have included brief points to note, case examples and a comparison of workload quarter on quarter. The direction of that workload should already be apparent to readers of my reports and I have already touched on the trends that have emerged during the year. A full analysis of that workload in relation to enquiries and formal disputes (cases) appears on pages 11 to 17 together with some supplementary statistics about the types of property involved, selling price or type of rental agreement and location.

Last year I noted that the majority of my disputes arose in relation to property selling for less than £300,000 and that most were situated in the South East. This year the trend appears to be for the majority of disputes to involve property selling for less than £250,000 (the reduction perhaps a reflection of the market situation) and again most commonly related to property in the South East.

Enquiries

Overall during 2008 my office received 12,357 enquiries in writing, by e-mail and mostly by telephone. These covered a wide variety of matters including some 724 which were outside my terms of reference because they were not related to estate agents, letting agents or property management. In such cases my office will guide the enquirer to the relevant organisation. Whilst the number of enquiries for 2008 represents just a 2.5% increase on 2007, behind this overall figure are some particular trends consistent with what I have already stated.

- Firstly enquiries within my terms of reference and which are related to matters that I could deal with once the firm itself had been given the opportunity to provide settlement, amounted to 6420 or a 6% increase over 2007.
- Secondly within that figure the significant trend is that sales enquiries have decreased from 5078 in 2007 to 4109 in 2008, a 19% decrease, but lettings enquiries have increased from 969 in 2007 to 2311 in 2008, a 138% increase. As a proportion of these enquiries will return to me as formal cases it is easy therefore to ascertain the likely nature of my future workload.

I have said in previous reports that around 22% of enquiries within my terms of reference come back as formal disputes and that 78% of enquirers therefore have no further contact with me. I have always been concerned to establish that those people have been able to resolve their complaint, hopefully by my office providing the guidance to enable that to be achieved. Eight weeks after their initial contact with us we now send a short survey document to those people which is analysed by Referenceline, an independent survey company, which reports on outcome and level of satisfaction with the service provided by the OEA. This was only introduced in November 2008 and I will start to provide some feedback in a forthcoming quarterly report.

Cases

For 2008 I received 1043 new cases, split 743 sales and 300 lettings. To put the expansion of the scheme into a context the total number of new cases represents a 20% increase on the same figure for 2007 but a 78% increase on the same figure for 2006. In total we resolved 799 sales and 170 lettings cases during the year. Our targets for case resolutions are 60% within 90 days and 90% within 120 days. 79% of sales cases were resolved within 90 days and 92.7% within 120 days. Regrettably we still have to achieve those figures in relation to lettings where the numbers of new referrals has meant that cases have to wait some time before being dealt with. I am confident that we can contain this situation and improve the service to member firms and complainants.

The complainant was supported either wholly or in part in 633 or 65% of cases.

“In total we resolved 799 sales and 170 lettings cases during the year”

During the course of the year the OEA terminated its agreement with The Dispute Service (TDS) under which that organisation was sub-contracted to deal with lettings disputes on my behalf in accordance with my terms of reference. This move was, to my mind, essential for two reasons. Firstly I think it was confusing for complainants to contact the OEA and then to be in correspondence with TDS (despite our explanations as to how things worked) and that could not be allowed to continue.

Ombudsman's Report

for 2008

Secondly many of my existing members are switching the focus of their business to lettings and it is important for there to be consistency in approach and in the terms of compensatory awards. I can control both those aspects better with my own case officers reviewing the cases. I would like however to thank Lawrence Greenberg and his team at TDS for their application to this aspect of my jurisdiction over the eighteen months or so of the service agreement.

Redress not regulation

There is a common misunderstanding about the role of Ombudsmen in dealing with disputes referred to them. This is particularly so in terms of the actions an Ombudsman can take against a firm that 'breaks the rules'. Sir Brian Carsberg in his recent review of Residential Property looking at standards, regulation, redress and competition in the 21st century provided a helpful statement of the difference between regulation and redress.

Regulation, as Sir Brian, says "...is intended to change the pattern of behaviour of firms in general and to improve the working of markets, often by undertaking measures that affect an industry at large in a broad kind of way"

Redress is "...intended to provide compensation for customers who have suffered from unacceptable behaviour, including cases of financial detriment."

"An essential part of my procedures is the opportunity for each party to the dispute to be able to represent against my findings"

As the Ombudsman for Estate Agents I provide redress. Whilst I have a role to influence business practice based on my experience of disputes I have seen, I have no powers to fine or otherwise penalise an agent. I provide compensation to those buyers, sellers, landlords or tenants who I judge have been disadvantaged by the actions of an agent. I measure those actions by their conformity or otherwise to the OEA Codes of Practice and I pay particular attention to levels of award to ensure I am consistent. It must be accepted however that each case will turn on its own individual circumstances and there may be factors (vulnerability of the individual for example) which will influence my thinking albeit that the circumstances of one case appear similar to a previous one.

An essential part of my procedures is the opportunity for each party to the dispute to be able to represent against my findings where they think I have made an error or misinterpreted a fact

or where they have some new evidence. Overall 23% of cases are represented against but the majority are from;

- agents who query the level of award, are astonished or are apoplectic at the level of 'fine'. I simply repeat that I am not a regulator, I do not 'fine' firms and those who represent need to carefully examine and consider my reasoning for the compensation I am awarding to the complainant.
- complainants who are reiterating their dissatisfaction or are expecting me to direct the industry to cease a certain practice or indeed put a particular firm out of business because of what they have allegedly done. As I have stated I am not a regulator, I am considering the actions of the firm in that one particular complaint, although by means of best practice notification and through my reports I do try to influence behavior in the industry.

I made awards in 633 cases totaling £385,037.12. The range of awards is spread widely and there is no 'target' that I aim at, the average award in sales disputes being £666 and £346 in lettings disputes. In 2008 I awarded the highest award yet made in the history of the scheme. This amounted to £23,880 and a summary of the case appears on page 24.

Codes of Practice

Having said that as Ombudsman I am not a regulator it is important to point out that there is a mechanism for taking action against any agent that seriously or persistently breaches the OEA Codes of Practice. Where I consider that an agent has indeed committed such a breach which has resulted in significant disadvantage to the complainant or where it is clear that a cultural or systemic failure will lead to other consumers being at risk, I will ask for an explanation from the agent as to why the failure occurred and a description of the steps taken to prevent a reoccurrence. I am then required to refer the matter to the Disciplinary and Standards Committee (DSC) of the independent Council to which I report. Any sanction or other disciplinary action to be taken against that firm is decided upon by that Committee without my involvement. That approach is most important as it retains a clear demarcation between me providing redress and the disciplining of a firm.

During the most recent year I referred 21 cases to the DSC and of these 15 related to sales disputes and 6 to lettings disputes.

For sales cases the referrals involved:

- 5 cases where my award had not been met. After DSC action 1 award remained unpaid because the firm had ceased trading but the remaining 4 were satisfactorily resolved without need for sanction.



- 3 cases where breaches of the Code of Practice were sufficiently serious for the DSC to ask for further remedial action by the agent and to issue a letter of admonishment (2 cases) and for one case to be referred to the OFT as a breach of section 21(2) of the Estate Agents Act 1979 (conflict of interest). Matters not referred to the OFT concerned insufficient record keeping relating to viewings and offers and to enable the transaction to be properly monitored.
- 6 cases where the DSC considered the agent's response and was satisfied that appropriate remedial action had been taken. Matters concerned insufficient explanation of fee terms, general poor record keeping and monitoring of the sale, inappropriate handling of an offer and failure to properly establish the seller's instruction regarding continuing marketing after acceptance of an offer.
- 1 case where although the DSC was satisfied with the agents explanation it was bound to refer the case to the OFT as the matter related to a breach of the firm's Home Information Pack responsibilities under the Housing Act 2004.

For lettings cases the referrals involved:

- 1 case of serious code breach involving outright refusal to issue an apology as directed. The DSC noted that the agent had paid the award and the business had been sold. It recognised that apart from admonishing the agent it could now take no further action.
- 3 cases where my awards had not been met. The agents involved were either expelled or resigned from membership.
- 2 are still under deliberation.

The OEA Code of Practice for Residential Sales has now been in force with OFT Consumer Codes Approval for just over two years. As part of that approval and to ensure it is developed in line with market practice we have embarked on a review of the existing code and will be looking for input and contribution from consumer stakeholders, relevant government departments and the industry itself. We intend that the updated and amended version will be released in mid 2009.

As part of OFT approval member firms that adhere to the sales code are committed to monitoring the satisfaction levels of their buyer and seller customers and whether those customers considered that the agent followed their obligations under the code. As in previous years Referenceline, an independent survey firm, has conducted an analysis of responses. The main trends and messages from the surveys is reported on pages 34 to 35 with 91% of sellers and 85% of buyers indicating general satisfaction with the service they received from the relevant

agent; and 81.9% of buyers, 89.1% of sellers reporting that the agents they dealt with were complying with the Code of Practice.

“The OEA Code of Practice for Residential Sales has now been in force with OFT Consumer Codes Approval for just over two years”

To ensure consistency of approach and to reflect the growing number of members now engaged in lettings work we are currently seeking OFT Consumer Codes Approval for the OEA Lettings Code of Practice. Again this requires a comprehensive process of consultation with stakeholders and we do not expect that this approval will be attained until later in 2009. In the meantime of course the provisions of the existing code will continue to provide member firms with clear standards by which to operate.

Both the OEA Codes detail standards which firms agree to apply to all aspects of their business. Once the Lettings Code of Practice has gained OFT approval both the existing OEA codes will have received independent accreditation, enhancing their credibility for consumers. The existence of the codes gives commentators and the general public a more positive view of agents knowing that they have been developed with wide consultation. They are independently approved and bring about consistency of treatment through clear statements of obligation.

There has however been some debate about whether the Codes of Practice should simply define high level principles and then be owned by an industry body established for that purpose. The OEA is keen to contribute positively towards this debate, but from my position as Ombudsman a number of fundamental issues come to my mind:

- High level principles cannot be defined as a Code of Practice
- Principles mean that the actual detailed approach is down to an individual firm's interpretation. Inconsistency of approach for consumers is inevitable and any less reputable firm is potentially able to apply a set of standards of their own definition to the disadvantage of their customers, and of course possibly to their competitors.
- A set of rules defined by trade associations would probably lead consumers to feel that they are less protected than under a code which had undergone rigorous examination and approval by a government body.

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- If the existing codes are operating successfully and are monitored and assessed independently then there seems little point in confusing the public with another code and I am certain that for the industry now is the wrong time to be incurring the inevitable extra costs associated with such a move.

I do feel however that an industry body (whether the existing trade associations or some newly formed body) could have some potential and positive aspects to address.

“the best way of establishing whether the agent they are dealing with is appropriately qualified and competent is, I believe, through a licensing regime”

From the cases I see, it is apparent to me that not everyone buying, selling or renting out property understands the process, the roles and responsibilities of the different parties (letting agent, estate agent, surveyor, conveyancer, financial adviser) and the inter-relationships between them. I support Sir Brian Carsberg's statement that consumers need greater awareness of the housing transaction. I believe that there is a need for greater guidance by the industry itself, pointing prospective buyers and sellers, landlords and tenants to areas of easy reference and promoting a coordinated programme of education.

An industry body should also seek to enhance the professionalism of participants in the industry. There are a number of training courses linked to professional qualification but for the consumer the best way of establishing whether the agent they are dealing with is appropriately qualified and competent is, I believe, through a licensing regime. Such a licence could only be obtained after gaining appropriate qualification and where an individual breaches his or her professional body's rules or a relevant code of practice then that licence to operate could ultimately be withdrawn.

The Consumers Estate Agents and Redress Act 2007

In my introduction I have emphasised the impact of this particular piece of legislation in relation to estate agents. Aside from the requirement to join an approved redress scheme, the Act imposes some strict record keeping requirements and gives greater inspection powers to Trading Standards Officers. It should be noted however that the Act has omitted to bring about any additional obligations for lettings agents.

The OFT laid down strict criteria for the approval of schemes under CEARA and whilst I believe that the OEA did meet the

requirements as it was already operating, the approval process gave us the opportunity to re-examine our procedures and documentation to ensure that complainants and member agents alike are made absolutely clear at each stage of our procedures, what their commitments are and what is needed in order to progress consideration of the case. A major change however has been the introduction of a process whereby the agent's submission to my office and copies of all relevant supporting documents are copied to the complainant at the point I issue my proposed decision. This is a requirement of our approval by the OFT. I have to take into account any Data Protection Act restrictions in copying documents but much of the complaints correspondence is already in the hands of the parties anyway and in my decision I can quote a relevant passage and so avoid the need to provide a copy document. It is not necessarily therefore a procedure that will lead to additional work or one that agents should be concerned about. Any information which concerns the personal security of any of the parties involved or third parties, any documents protected by legal or professional privilege; or any information which is sensitive or otherwise confidential will not be passed across.

Customer Satisfaction

As in previous years the OEA has sought from its own 'customers', their views on the service received from my office. The results of these surveys can indicate where we can improve procedures or develop our approach.

The full results of the research for 2008, conducted again on our behalf by Referenceline are shown on pages 18 to 20. In summary the results are similar to previous years with 85% of complainants surveyed finding that the procedure for bringing a complaint to my attention was easy and a similar percentage finding the explanation and guidance from my office clear and helpful. As I have explained earlier in this report we still have some work to do to further improve turnaround times for cases.

Closing remarks

The additional workload and all the developments to which I have referred could not be successfully actioned without the continued hard work and commitment of the staff in my office at Salisbury. A list of staff appears on page 29 and each one of the individuals named plays an important role in providing our service. Next year will bring more developments and further challenges. I have every confidence that the OEA is well-equipped to face up to the resultant changes. I thank everybody for their support and enthusiasm.

Christopher J Hamer
Ombudsman for Estate Agents

General Statistics



- Enquiries
- Cases
- Property Type
- Analysis by region / type of property / value
- Analysis by rental amount / type of agreement
- Causes of complaint

Enquiries	2007	2008	% Difference	
1 GENERAL ENQUIRIES				
From Estate Agents (does not include membership)	429	520		
From Letting Agents (“)	6	19		
From the Media	45	27		
From the Public	465	590		
TOTAL	945	1156	22	
2 COMPLAINT ENQUIRIES AGAINST ESTATE AGENTS				
Complaints against non Member Agents - Sales	*	1365		
Complaints against non Member Agents - Lettings		1297		
Sub Total 1	3211	2662	-17	
Complaints against MA OTOR - Sales		593		
Complaints against MA OTOR - Lettings	*	131		
Sub Total 2	691	724	5	
Complaints against Member Agents Within Terms of Reference - Sales				
From Complainant who is a Seller	2985	2907		
From Complainant who is a Buyer	1761	927		
From Complainant who is a Seller & Buyer	147	98		
Complainant unwilling to state whether Buyer or Seller	185	177		
Sub Total 3	5078	4109	-19	
Complaints against Member Agents Within Terms of Reference - Lettings				
From Complainant who is a Landlord		835		
From Complainant who is a Tenant	*	1397		
Complainant unwilling to state whether Landlord or Tenant		79		
Sub Total 4	969	2311	138	
Complaint about MA Sales but non-member Lettings	Sub Total 5	574	619	8
Complaint about MA HIP but non-member Sales/Lettings	Sub Total 6	0	171	
Insufficient info given as to whether Member/Non-Member (A)	Sub Total 7	584	605	
Complaint enquiries against all Agents	TOTAL 1-7	11107	11201	1

* Note that 2007 data in relation to the split between sales and lettings is not available

General Statistics

Cases	2007	2008	% Difference	
3 CASES RECEIVED				
Workload Sales	771	743		
Workload Lettings	99	300		
TOTAL	870	1043	20	
CASES REVIEWED				
Productivity:				
Cases Reviewed in Year - Sales	*	754		
Cases Reviewed in Year - Letting		223		
TOTAL	847	977	15	
Representations conducted in Year - Sales		186		
Representations conducted in Year - Lettings	*	43		
TOTAL	143	229	60	
4 CASES CLOSED IN YEAR SALES				
Description of Complainant				
Seller	522	547		
Buyer	191	215		
Seller & Buyer	38	36		
Other/Unknown	0	1		
TOTAL	751	799	6	
Findings:				
Outside Terms of Reference/Not Pursuing	11	4		
Complainant Withdrawal/Complainant & MA resolution	3	6		
Against Complainants (no Award made)	266	271		
Sub Total 5	280	281		
For Complainants (Award made - Member Agent made NO Offer)	357	442		
For Complainants (Award made - Member Agent made Offer) (4)	114	76		
Sub Total 6	471	518		
TOTAL	Sub Totals 5-6	751	799	6
Size of Awards				
£ 1-99	70	48		
£ 100-499	267	294		
£ 500-999	73	110		
£ 1000-2999	41	48		
£ Over 3000	20	18		
TOTAL	471	518		
Total value of Awards made				
TOTAL	£265,485	£345,142		

* Note that 2007 data in relation to the split between sales and lettings is not available



		2007	2008	% Difference
5 CASES CLOSED IN YEAR LETTINGS				
Description of Complainant				
Landlord		17	80	
Tenant		27	90	
TOTAL		44	170	286
Findings:				
Outside Terms of Reference/Not Pursuing		2	0	
Complainant Withdrawal/Complainant & MA resolution		1	8	
Against Complainants (no Award made)		20	47	
	Sub Total 5	23	55	
For Complainants (Award made - Member Agent made NO Offer)		20	111	
For Complainants (Award made - Member Agent made Offer)		1	4	
	Sub Total 6	21	115	
TOTAL	Sub Totals 5-6	44	170	286
Size of Awards				
£ 1-99		14	30	
£ 100-499		5	57	
£ 500-999		1	16	
£ 1000-2999		1	12	
£ Over 3000		0	0	
TOTAL		21	115	
Total value of Awards made - Lettings				
TOTAL		£3,394	£39,895	
6 TOTAL NUMBER OF CASES CLOSED IN YEAR SALES & LETTINGS		795	969	22

Supplementary Statistics

Complaints against member agencies outside terms of reference

	2007	2008		2007	2008
Sales*			Lettings		
Outside OEA Time Frame	123	79	Outside OEA Time Frame	*	30
Letting	21	47	Complaint Already Dealt with By Court		10
Mortgage Advice	55	24	Not Actual client of MA		24
Survey	11	20	Agent Versus Agent		7
Complaint Already Dealt with By Court	11	9	Commercial Property		16
Not Actual client of MA	73	60	Solicitor		1
Not Buyer/Seller	68	56	Complaining as a business		13
Agent Versus Agent	48	93	Private Tenant		6
Commercial Property	14	53	Private Landlord		18
Building Plot	6	11	Guarantor		2
Special Terms	0	2	Other		4
Touting	4	10	TOTAL	*	131
Overseas Property	7	51	* Note that detailed analysis of lettings enquiries is not available for 2007. Figures shown for sales (2007) include the lettings enquiries.		
Other	242	54			
Solicitor	8	12			
Complaining as a business	0	12			
TOTAL	691	593			

As explained in my introduction each party has the opportunity to represent against my findings. Overall 23% of cases are represented against as follows:

Representations Completed (Sales)			Representations Completed (Lettings)		
No. of Representations	143	186	No. of Representations	0	43
From MA	34	71 (see Note 1)	From MA	0	13 (see Note 3)
From Complainants	109	115 (see Note 2)	From Complainants	0	30 (see Note 4)
TOTAL			TOTAL		

Results of Representations

- 33 findings reduced (1 factual error, 29 new info, 3 no new info) and 38 findings unchanged (37 no new info, 1 new info).
- 19 findings increased (2 factual error, 1 no new info, 16 new info), 95 findings unchanged (4 new info, 1 factual error and 90 no new info), 1 reduced (new info following court proceedings).

Results of Representations

- 4 findings reduced (4 new info, 0 no new info) and 9 findings unchanged (9 no new info, 0 new info).
- 3 findings increased (0 factual error, 0 no new info, 3 new info) and 27 findings unchanged (0 new info, 0 factual error and 27 no new info).

Analysis of Complaint Information



Sales – Reviewed within the OEA figures relate to the period 1 January - 31 December

Value of property	
<99,999	6%
100,000 – 149,000	18%
150,000- 199,000	25%
200,000- 249,000	13%
250,000-299,000	13%
300,000-349,000	6%
350,000-399,000	6%
400,000-449,000	4%
450,000- 4999,999	3%
>500,000	6%
Total	679

Property type	
Bungalow detached	4%
Bungalow Semi detached	1.5%
House detached	21%
House semi detached	33%
House Terrace	22%
House link detached	0.5%
Maisonette	0.5%
Flat	16.5%
Not identified	1%
Total	726

Agency agreements	
Sole Agency	89%
Joint sole agency	1%
Multi agency	5%
Sole selling rights	5%

Reviews by area %

6

SCOTLAND/
NORTHERN
IRELAND

6

NORTH EAST

8.5

NORTH WEST

7

YORKSHIRE

3

WALES

9

WEST MIDLANDS

4

EAST MIDLANDS

12

EASTERN REGION

9

SOUTH WEST
ENGLAND

21.5

SOUTH EAST
ENGLAND

14

GREATER
LONDON

Analysis of Complaint Information

Lettings – Reviewed within the OEA figures relate to the period 1 October - 31 December

Rent (per month)	
<£400	6%
401 – 800	56%
801 -1200	15%
1201- 1600	9%
1601-200	3%
2000+	2%
Not identified	9%

Type of Tenancy Agreement	
Periodic Statutory	6%
Shorthold Tenancy	84%
Other	10%

Type of property	
Bungalow detached	1%
Bungalow Semi-detached	1%
House detached	14%
House semi-detached	18%
House Terrace	13%
Flat	20%
Not identified	33%

Reviews by area %



Nature of Complaints



Cases Formally Reviewed (Sales)	
	2008
Maladministration	698
Commission/Fees	370
Sales Particulars	285
Buyers Finances	133
Conflict of Interests	125
Viewing	107
Initial Valuation	79
Sale Boards	64
Unfair Bias Towards Other Party	50
Communication of Offers-Seller	37
Keys	35
Communication of Offers-Buyer	33
Gazumping	16
Request for Identification (new since Aug 2004)	1
Discrimination:	
Offer of Financial Services	2
Racial	1
Gender	1
Disability	1

Cases Formally Reviewed (Lettings)	
	2008
Maladministration	205
Management Failure	147
Deposit	97
Rent	68
MA Internal Enquiry	67
Commission Fees	44
Inventory	36
Keys	28
References	25
Lettings Particulars/Advertising	14
Conflict of Interest	12
Letting Board	9
Viewings	2
Request for Identification (new since Aug 2004)	1
Discrimination:	
Offer of Financial Services	2
Racial	1
Gender	1
Disability	1

N.B.

Figures total more than the number of actual reviews as there will be different elements within one complaint.

Customer Satisfaction Survey 2008

In common with previous years, we have conducted a survey of customer satisfaction with the service provided by the OEA by sending out questionnaires to a sample of complainants cases closed in 2008. Response rates remain high at 47% (48% in 2007). The Survey process is conducted by an independent organisation, Referenceline. During 2008, on Referenceline advice, we have slightly reformatted the questions asked of complainants to enhance consistency across the survey and to reduce the risk of bias (for example, a complaint not supported might colour a complainants view of the service received) and misunderstanding. We have restated the results of previous year's surveys to ensure appropriate comparison. The results are analysed from complainants whose cases were closed in the relevant year.

* Percentages total more than 100% because more than one option could be selected.

Approaching the Ombudsman

This year's results are similar to previous years. Amongst respondents:

52%

are looking for an independent view

55%

feel convinced that the firm's decision is wrong

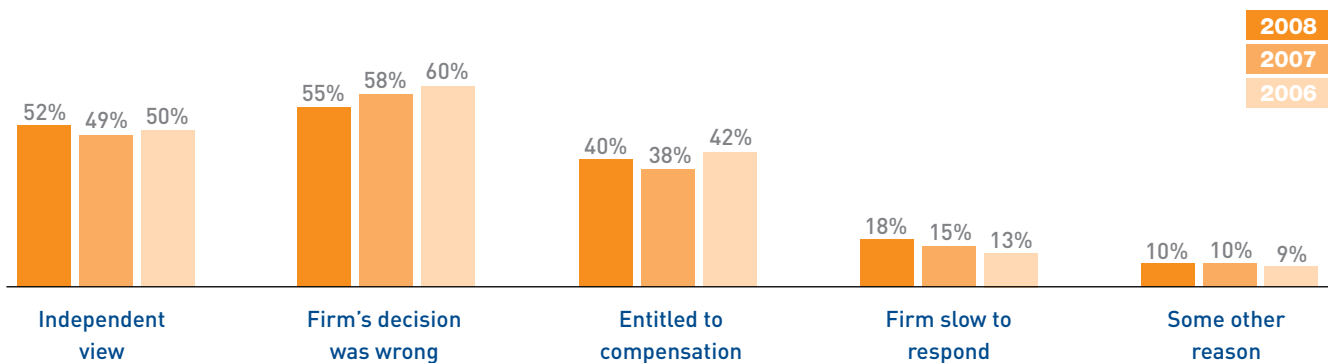
40%

feel entitled to (greater) compensation

18%

feel that firms are slow to respond

Why did you decide to refer your complaint to the Ombudsman?



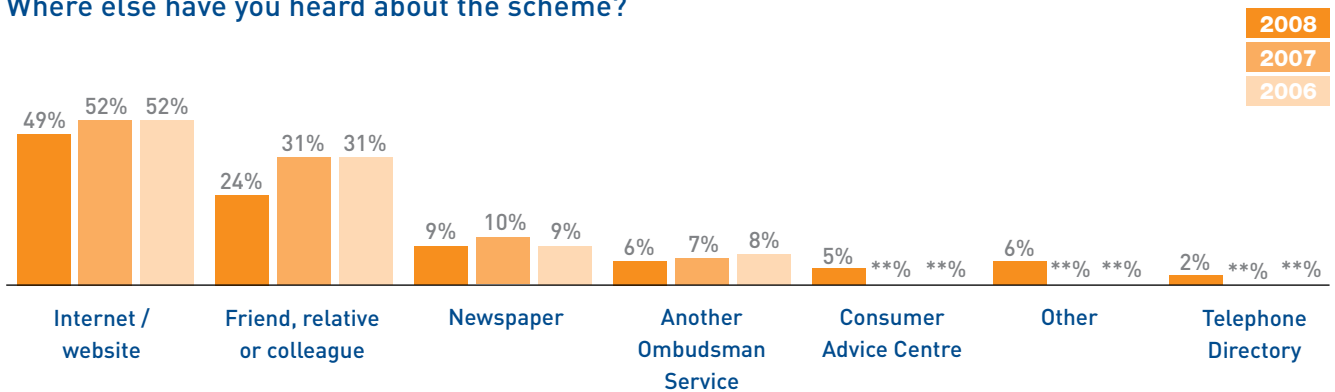
There is some evidence of a growth in the number of consumers being concerned that firms are slow to respond (13%, 15%, 18% over the three years 2006, 2007, 2008) but a decline in firms being perceived as having made a wrong decision (60%, 58%, 55%).



Awareness of the OEA

This year's survey has offered respondents a more detailed list of answers since September, showing that Consumer Advice Centres, Telephone Directories and other sources of information also play a role in creating awareness among consumers. This longer list of answers has only been available since September.

Where else have you heard about the scheme?

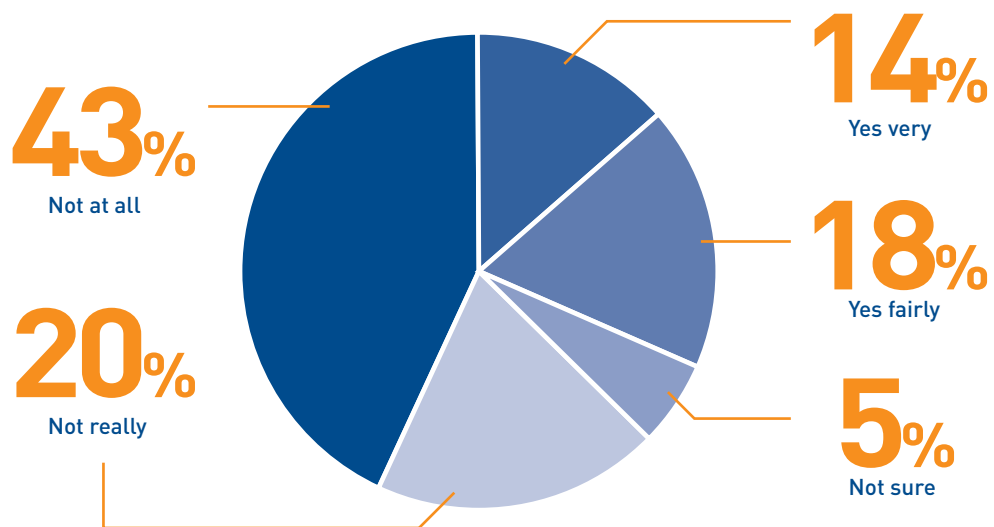


**= figures not available for 2006 and 2007

Information provided by Agents

The issue of whether consumers are given appropriate information about the OEA by the Agent was previously included in the chart above, but is now treated as a separate survey question. The chart below shows that less than a third of respondents felt that this was the case:

Did the Agent clearly explain their membership of the OEA and your right to a free independent review?



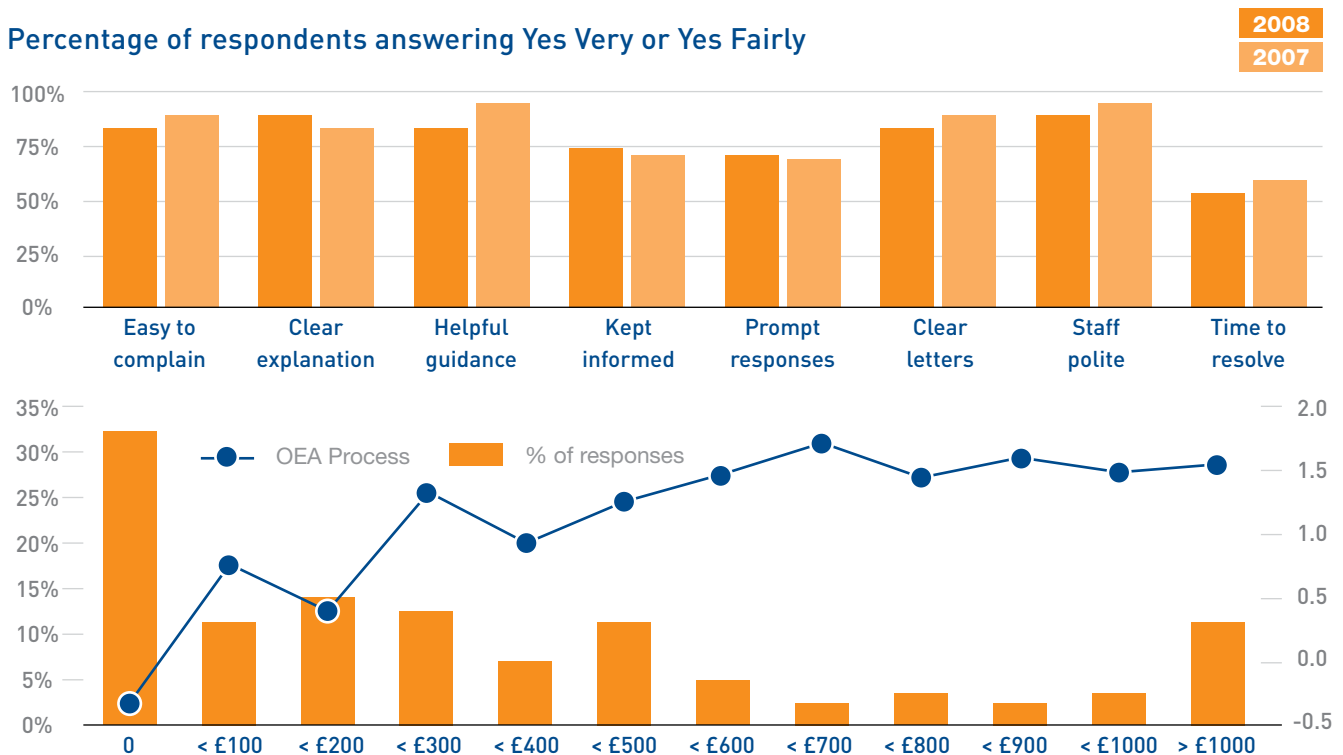
Customer Satisfaction Survey 2008

How do complainants find dealing with the OEA?

Complainants are asked a number of questions about the administration of their case. Figures for the previous year 2007 are shown in brackets below:



Percentage of respondents answering Yes Very or Yes Fairly



The chart shows that 30% of respondents received no award and say that they are not very satisfied with the process. Consumer satisfaction then increases with the amount of the award, reaching a maximum at about £600+. In other words, their answers about the overall administrative process are

heavily biased by the amount of the Ombudsman's award, even though the two issues are theoretically separate. **Satisfied with OEA Process (right-hand axis) 2= Yes Very, 1 = Yes Fairly, -1 = Not Really**

Please note that figures shown here for previous years may differ slightly from those published in earlier reports. This is due to additional responses from complainants – e.g. those received during 2007 but relating to cases closed in 2006. These differences do not invalidate any conclusions previously published.

Messages



In my three quarterly reports throughout 2008 I included examples of case studies where I thought that there was an important message for agents to exercise caution and to help improve services. I thought it would be helpful to collate those messages here and to revisit or update my thinking.

Sales particulars

All Sales Particulars must be approved by the vendor at the outset and before the property can be marketed. Failure to do so is a breach of the OEA Code of Practice (paragraph 4I), could ultimately leave an agent open to action under the Property Misdescriptions Act, or at a simple level bring about confusion as to what was actually included in the property sale. An agent using a sub-agent (as agreed with the seller) must ensure that the sub-agent is also correctly describing the property. Where property details are uploaded to a website or a property portal, agents should always check that the uploaded details are correct and any photographs used do relate to the actual property.

Agency Agreements

The precise terms of an agreement must be drawn to the seller's attention before they sign the document. Paragraphs 3e – 3i of the Code of Practice cover an agent's obligations in this regard but it is a legal requirement under the Estate Agents (Provision of Information) Regulations 1991 that the type of agreement must be described fully. I believe that sellers still do not properly understand the important difference between 'sole agency' and 'sole selling rights' and it is therefore essential that the distinction between the two is highlighted. Whilst I will not overturn a contract that has been signed by the seller as being read and understood I will, if a dispute arises look to establish that there was no misleading explanation of the terms giving rise to the complainant being disadvantaged.

Submission of Offers

Paragraphs 6a and 6b of the Code of Practice specify an agent's obligations in respect of submitting offers to the seller. I have seen a number of disputes where there is some lack of clarity as regards whether an offer was being made, or whether for example, the prospective buyer was simply considering making an offer of a certain amount: and then whether that offer was accepted conditionally or the amount would be acceptable if formally offered. It is the agents responsibility to establish the 'status' of the offer and then to act accordingly and to make record of his actions.

Fixed Fees

If a Fixed Fee basis is to be used as a way of charging the commission fee then the agent must ensure that the seller understands that the fee will not vary even if the achieved price is less than the asking price. I remain concerned that this basis of charging, whilst it is acceptable as a commercial practice, can inflate the fee in percentage terms where the property is overvalued in the first place. In the current market conditions over valuation can easily occur quite apart from the possibility that there might be a deliberate action by any less scrupulous agent. I have noted occasions where the fee has been deliberately obfuscated such that the seller is not given a clear understanding of the basis of the charge. Whilst I will not rewrite a contract which has been signed by the seller I will make an appropriate award where I consider that obfuscation has disadvantaged the seller.

Messages

Deposits

Pre-contract deposits should not be taken if the agent has no client account facilities. Where such deposits are taken, a clear form of receipt should be given showing the status of the deposit, when it will be repaid or forfeit. Paragraphs 8a – 8e of the Code of Practice apply. I have noted previously that I think deposits should be held by solicitors and agents should not involve themselves in accepting or holding money for this purpose.

Home Information Packs

I devoted the whole of my third quarter report to this subject and I summarise here the main issues that I highlighted at the time:

- HIP agreements that I have seen appear to adequately describe the liabilities that a seller is entering into but agents should still ensure that the terms are fully explained to the client.
- Agents should make clear that the charge for the HIP and the charge is not related to the sale fee but that obtaining a HIP is a legal requirement generally the subject of a separate agreement with a separate HIP provider company.
- Agents have legal responsibilities in regard to the HIP as defined in Part 5 of the Housing Act 2004. They should ensure that all staff are familiar with these responsibilities particularly in relation to giving copies of the packs to prospective buyers.
- Whilst it is good practice to verify the accuracy of the pack with the seller, agents should not be drawn into commenting on the content to any prospective buyer.

Lettings

I have noted the OFT's action on renewal fees but with no court decision on the fairness or otherwise of such contract terms my stance remains that the terms of the contract apply and I will decide cases accordingly. However I do consider it to be a matter of best practice that when the landlord is contacted about renewal of a tenancy he or she should be reminded that a fee (where that is allowed for in the contract) will apply to the renewed tenancy regardless of whether the landlord negotiates direct with the tenant. Applying that best practice will mean that the landlord should be in no doubt as to his or her liabilities.

Many of the lettings disputes I am asked to resolve involve the alleged failure of the agent to carry out property inspections where a management agreement is in place. Landlords have brought disputes to me because the property has deteriorated rather badly and they challenge agents on whether the inspection visits have taken place or whether they have been comprehensive enough as the damage to the property could have been reported and acted on earlier. I cannot make a judgment on the state of a particular property (even if provided with photographs) and I am left equally uninformed if the only 'evidence' I have is verbal confirmation that visits did indeed occur. The message therefore is that, if the terms of business state that inspection visits will take place, the nature and frequency of those visits must be clearly described to the landlord and the visits themselves fully documented.

Case Summaries



Confidential Information

The issues that are the subject of this Case Summary are:
- Release of Confidential Information and the Commission Fee.

The Complainant was selling her Property through the Member Agent. An offer had been received and accepted on the Property in December and there was a complete chain below. Exchange and Completion took place in April the following year.

Release of Confidential Information

The Complainant complained that the Member Agent did not comply with the Data Protection Act and released her personal information to the buyers at the bottom of the chain. She further complained that the Branch Manager was abusive and threatening when the Complainant raised this issue. The Member Agent admitted that during the progression of the transaction there had been some delays relating to planning permission at the Property and in the course of discussing this with the buyers (at the bottom of the chain) it was disclosed that the Complainant worked for the Council. Whilst the exact name of the Council was not named by the Member Agent, by coincidence one of the buyers (at the bottom of the chain) worked for the same Council and was able to obtain the Complainant's email address by the internal intranet. This resulted in the Complainant receiving a rude and abusive email from the buyers (at the bottom of the chain).

Commission Fee

The Complainant was looking for the total Commission Invoice to be set aside due to her Complaint and the Commission had not been paid.

I concluded that it was not my role to consider whether a breach of the Data Protection Act has taken place. That was the responsibility of the Information Commissioner. However, the Member Agent had an obligation not to release or misuse confidential information given to them by their client, without their client's permission. My examination of the Member Agent's company file discovered that not only did the Member Agent disclose that the Complainant worked for the Council they also disclosed the first line of her onward address. I deemed that this information should not have been disclosed by the Member Agent to the buyers (at the bottom of the chain), therefore the Complaint was upheld. With regard to the Complainant's complaint that the Branch Manager was rude and abusive when she raised her Complaint, the Member Agent denied the allegation but admitted that the Branch representative was quite abrupt. I was not present at the time and had no knowledge of whether statements were made in

an abusive or threatening manner. As such, I was unable to consider this element of the complaint further.

With regard to the Commission Fee, the Contract that the Complainant had entered into was one whereby she agreed to pay the Member Agent a commission fee if they introduced a Buyer who went on to Exchange Contracts and Complete on the transaction, they did and I concluded that the Commission Fee was payable in full, therefore the Complaint was not upheld.

The Commission Fee had not been paid when it became due and I took into account the advantage to the Complainant of her not doing so. I calculated this amount (at the Court rate of interest at 4%) to be £124.

The Member Agent had made a goodwill offer of £150 which had been rejected by the Complainant. I made an Award of £250 to reflect the Member Agent's failings in respect of their disclosure of confidential information. After deduction of the advantage to the Complainant of not paying the Commission invoice when it became due my Award to the Complainant stood at £126.

Security of Property

The issue that is the subject of this Case Summary is:
- The Member Agent's conduct whilst accompanying a block viewing.

The Complainants were Prospective Sellers. They had instructed the Member Agent to sell their Property and had provided the Member Agent with a set of keys to enable them to accompany viewings. Two days after instruction the Member Agent arranged a block viewing at the Property. At the end of the block viewing the Member Agent secured the Property and left.

The Complainants complained that on the day of the block viewing they were telephoned by the Property's former owner who had been contacted by a neighbour to say that people were climbing out of the windows of the Property having been locked in and they had then left leaving the windows unlocked. One of the Complainants returned to the Property two days later from the area where she was working. She found that a rear kitchen window handle and lock had been broken and could no longer be locked. She arranged for an emergency repair to be carried out at a cost of £198.

It came to light that at the end of the block viewing the Member Agent did indeed secure the Property but unfortunately he had left two viewers locked in the Property who then made their escape via a downstairs window.

Case Summaries

The Complainants further complained that the Property had therefore been left unsecured for two days (from the time of the block viewing until the day when one of the Complainants returned to the Property).

In conclusion, the Member Agent admitted that their negotiator had left the Property not realising that two people who had been upstairs were still inside. He had been distracted as he had found difficulty in securing the back door to the Property. He had previously checked upstairs but one couple had chosen to go back up. The Member Agent claimed that they had returned to the Property after the incident and ensured that the Property was secure; however, it was not, hence the need to engage contractors to repair a window handle and lock. The Member Agent offered to reduce their Commission Fee by £500, but the Complainants rejected this and withdrew their instruction. The Member Agent then revised their offer to a compensation payment of £250. The Complainants also rejected this. The Complainants were looking for a compensation payment of £1000 to cover the cost of the emergency repair, travel costs, loss of earnings and distress and inconvenience.

I concluded that the Complainants should be reimbursed for the cost of the emergency repair work. I further found that travel costs had been incurred when one of the Complainants returned to the Property. I was not persuaded that she incurred loss of earnings through lost work, as opposed to her work being postponed or re-scheduled. However, I did feel that an Award for distress, aggravation and inconvenience was merited. In total I made an Award of £548.

Acting in best interests

The issues that are the subject of this Case Summary are: - Conflicting advice given by members of staff, Failure to act in the Complainant's best interests, The Auction Issue, and Failing to Negotiate Effectively.

The Complainant was selling the Property which had been owned by his late mother. He was the sole executor of her estate. He was aware that the Property was adjacent to another property which had two abandoned, but capped, mine workings in close proximity. In recognition of the possible detriment that this might have to the value and/or saleability of the Property, the Complainant commissioned an independent risk assessment report from a consultant specialising in local mine workings. The Property was eventually sold to a cash buyer introduced by the Member Agent at a price roughly half that of the Member Agent's

original valuation. The buyer then sold the Property at auction for a price 45% higher than he had paid for the Property; the subsequent buyer then re-auctioned the Property and made another (though much smaller) profit.

Conflicting advice given by members of staff – the negotiator with whom the sale was first discussed, said that they were not concerned about mine workings, that these issues were part of the local area and that they regularly sold properties in similar circumstances. The Complainant was advised to continue marketing the Property at the price at which it had been marketed (unsuccessfully) by another estate agent, a price which disregarded the mine workings. Subsequently, the Branch Manager of the Member Agent rescinded this advice and suggested that the Complainant should settle for a cash sale at a level of up to 50% below the original price.

Failure to act in the Complainant's best interest – the Complainant complained that the Member Agent offered no support in securing the best possible price for the Property, that the Member Agent did not advise that a property auction may have yielded a better result although they had close links with property auctioneers, and that he ultimately was persuaded to sell the Property at a figure significantly lower than its true value.

The Auction Issue – it became clear from the sale prices achieved at the two subsequent auctions that the Complainant could have achieved a much higher price for the Property had he been advised of this possible course of action.

Failing to Negotiate Effectively - whilst it was ultimately the Complainant's decision to accept or reject offers made, he felt that he had been led to make a decision which was ill-informed due to shortcomings on the part of the Member Agent.

In conclusion, there were deemed to be a number of shortcomings on the Member Agent's part. It was confirmed that they had not carried out a market appraisal of the Property before recommending an asking price. They maintained the previous estate agent's asking price, even though this had failed to generate any offers over a period of ten months. They did not support their continuance of this asking price with any evidence of comparable sales values. They did not explain how the proximity of mining works might affect the selling price, despite the Complainant having been sufficiently aware of the possible implications to commission his own independent survey. Although the Member Agent repeatedly maintained their claims of considerable experience in dealing with the issue of local mining, different members of the Member Agent's staff provided the Complainant with



conflicting advice. No contemporaneous notes were made during the transaction, nor was there any record of what was discussed regarding the marketing, their advice on price reductions or the approach to possible cash buyers. The Complainant was also not informed about the option or potential of selling the Property by auction.

The Award made in this case was considerable. Although it was ultimately the Complainant's decision to accept the offer at which he completed the sale, and there was no guarantee of a particular price he may have achieved at auction, by any way of calculation he had been persuaded to accept a price that was subsequently proven (at auction) to be significantly lower than the true value of the Property.

The Complainant was awarded £23,880 (the highest Award to date). This sum included an Award of £1,000 for the Complainant's distress, aggravation and inconvenience as a result of the Member Agent's failings, the balance was awarded for actual proven financial loss.

Letting

The issue that is the subject of this Case Summary is: - The Member Agent's handling of a Tenancy Application.

The Complainant was the Prospective Tenant of the Property being marketed by the Member Agent. The Complainant viewed the Property and told the Member Agent that she wished to proceed with a Tenancy application. She subsequently completed the credit referencing paperwork, provided details of a guarantor and paid a 'Referencing and Holding Charge'. The Member Agent later contacted the Complainant and explained that the referencing company had declined the application on the grounds that her guarantor's earnings were below the level required and gave her the option of providing an alternative guarantor or paying six months' rent in advance. Ultimately, neither of these options was taken up and the Property was put back on the market, the referencing charge was not refunded to the Complainant.

The Complainants' first complaint was that the Member Agent failed to inform her of the minimum requirement in respect of the guarantor's income before she completed the application and paid the referencing fee. Secondly, she complained that the Member Agent had accepted payment for the referencing fees but that the references were not taken up. Thirdly, the Complainant was unhappy with the Member Agent's claim that she had not contacted them to advise them of her intended course of action.

The Complainant was seeking an admission from the Member Agent that their actions were incorrect, and the return of the referencing fee.

In conclusion I noted that the Complainant accepted my initial assessment of the case, whilst the Member Agent did not respond and I assumed that they were not disputing it.

The document which the Complainant filled in to apply for the referencing checks did in fact state that the referencing charge was non-refundable. Whilst there was no evidence of a full submission being made to the Referencing Company, there was evidence of contact between the Member Agent and the Referencing Company which led to the application being declined. Whilst the Complainant maintains that the Member Agent should have informed her about the level of earnings required for guarantors at the time she submitted her application, there was no evidence to suggest that the Member Agent was aware what the minimum level of earnings might be for the guarantors. Their response to the Complainant was simply on the basis of the response they had received from the Referencing Company. In light of this I was not able to support this Complaint.

On the issue of contact, the Complainant and the Member Agent each maintain that the other failed to contact them after the Complainant was given the option of providing a new guarantor or paying six months' rent in advance. In the absence of file notes it was not possible to ascertain whose allegations of lack of contact were accurate. Whilst I had no reason to disbelieve either party it was not possible to make a decision based on what may or may not have been said by or to whom, and I was not able to support this Complaint.

Although no Award of Compensation was made, I noted a number of concerns about the way in which the Member Agent dealt with this Complaint and directed them to review their In-House Complaints Handling procedures to ensure compliance with section 15 of the OEA's Code of Practice.

Mis-description

The issues that are the subject of this Case Summary are: - Misrepresentation of build quality and Lack of information about the Seller (a developer).

The Complainants in this case were the Buyers of the Property that was under construction. The Member Agent was marketing the Property on behalf of the developer. There were delays in finishing the build and when the Complainants eventually

Case Summaries

moved in they were unhappy with the standard of workmanship and the quality of the fixtures and fittings.

Misrepresentation of build quality – The Complainants complained that the Member Agent had been marketing the property as a 'luxury apartment' and they felt that this was an unreasonable representation of what they found when they moved in.

Lack of information about a Seller (a developer) – The Complainants also complained that the delays in completing the building of the apartment led them to question the financial status of the developer, and they felt that the Member Agent should have investigated their concerns as the Complainants later discovered that there had been problems which, had they known about them, would have persuaded them to withdraw from the transaction.

The Member Agent in a report to the OEA pointed out that the word 'luxury' is subjective and impossible to quantify, but there were a number of features at the Property which would have made it reasonable to refer to the Property in those terms. They also understood that the Complainants agreed a 'snagging list' with the developer.

The Member Agent also responded to the Complainants by saying that they had no knowledge of the developer's financial status and never would be privy to such information and they had acted as marketing agents for the developer for some time with no reason to believe that the developer was in financial difficulty.

With regard to the knowledge or otherwise of the developer's financial status, the Member Agent was neither obliged to comment or investigate.

I did not find that the Member Agent could be held in any way responsible for the Complainants' dissatisfaction with the Property, and I was therefore unable to support their Complaint or make an Award of compensation.

Sub Agency

The issue that is the subject of this Case Summary is: - Lack of duty of care in instructing a sub-agent.

The Complainant in this case was the potential seller of the Property, and had signed a Sole Selling Rights Agency Agreement with the Member Agent (hereinafter referred to as Agent A). Five weeks later the Complainant provided the

Member Agent with the required one week's notice of the termination of this agreement, and then instructed a different agent (Agent B) on a sole agency agreement.

Subsequently, a potential buyer viewed the Property on two occasions. Shortly afterwards the Complainant was informed by Agent B that the potential buyer had reported to them that the Property was being advertised on the Internet by another agent (Agent C) at a significantly lower price. The Complainant felt that the difference in the advertised price persuaded the prospective buyer that he (the Complainant) had recently changed agents and increased the price, and that this perception damaged the prospect of a sale.

Following enquiries by the Complainant it emerged that Agent C had been appointed by Agent A on a sub-agency basis. When asked, Agent C was unable to explain why they were still marketing the Property and claimed that the price had been advertised incorrectly as the result of an IT error. The Complainant then made contact with Agent A and was informed that they regularly used Agent C as a sub-agent but again they could not explain why the Property was still being advertised by Agent C or why there was a substantial discrepancy in the price.

The Complainant then wrote to Agent A stating that he felt that the actions of their sub-agent had a negative impact on the prospect of a sale in a difficult market, and that he felt entitled to compensation as the actions of A and C had severely impaired the chance of a sale through Agent B. To support this claim he cited the case of the prospective buyer who had withdrawn his interest after seeing the Property advertised at the lower price.

Agent A responded that they were completely at a loss as to why their sub-agent had continued to advertise the Property after they (Agent A) had been dis-instructed and as to why the advertised price was significantly lower than the price at which the Complainant had instructed them.

In conclusion, it was established that Agent A had no administrative safeguards in place to ensure that sub-agents were informed of client's dis-instructions or that sub-agents portrayed a property in a correct and appropriate manner. This was clearly in breach of the OEA Code of Practice as a Member Agent is liable at law for the actions of any sub-agent they appoint.

Whilst the Member Agent (Agent A) had breached the OEA Code of Practice, there are too many uncertainties in the sale system to conclude that the Complainant had, or would have,



suffered any financial loss, or indeed to conclude that the prospective buyer withdrew his interest as a direct result of Agent C's unauthorised and inaccurate marketing.

However, the overall impact of Agent A's negligence in failing to monitor and instruct their sub-agent resulted in worry and aggravation and would have caused ongoing concern for the Complainant.

In light of this I made an Award of compensation to the Complainant of £1500.

Tenancy Deposit

The issue that is the subject of this Case Summary is: - Member Agent's handling of the return of the Tenant's Deposit.

The Complainant in this case was the Tenant who had entered into an Assured Shorthold Tenancy Agreement through the Member Agent.

At the point that the Agreement was signed, the Tenant paid a deposit of £625. Before the expiry of the tenancy (initially a six-month agreement although the tenancy was extended by a further six months.)

Just over a month before the expiry of the second tenancy period, the Complainant wrote to the Member Agent to confirm the termination of the agreement and the Member Agent carried out the Property check which confirmed that the Property was being handed back in good condition at the end of the tenancy.

The Member Agent emailed the Landlord to ask for confirmation of the return of the tenant's deposit. The Landlord responded to advise that the deposit would be returned within 30 days. Despite further correspondence between the Complainant and the Member Agent, and between the Member Agent and the Landlord, the deposit was still not returned.

The Complainant's complaint was that the Member Agent failed to provide her with a copy of the Tenancy Agreement signed by the Landlord, that the Member Agent withheld her deposit when she requested its return, and that the Member Agent was uncooperative in responding to the issue of the return of the deposit.

The start of this Tenancy agreement pre-dated the tenancy deposit protection regime which came into effect on 6 April 2007, which requires that all deposits (for rent up to £25,000

per annum) taken by landlords and letting agents for Assured Shorthold Tenancies in England and Wales must be protected by a tenancy deposit protection scheme.

There is evidence on the file that the Member Agent had contacted the Landlord on more than one occasion, as they were obliged to, to pursue the return of the Complainant's deposit. However, there is no evidence to show that the Member Agent provided the Complainant with a copy of the Tenancy Agreement signed by the Landlord.

In conclusion, I found that the Member Agent had met their obligations under paragraph 12d of the OEA Code of Practice in attempting to negotiate the return of the deposit from the Landlord.

However, I found that the Member Agent failed to forward to the Complainant a copy of the agreement signed by the Landlord and subsequently failed to do so again when requested by the Complainant as part of the complaints process. They also failed to make clear in the Tenancy Agreement how the deposit was to be held and by whom.

As my Terms of Reference do not allow me to consider the issue of the return of the deposit and how much should be returned as this is a matter between the Landlord and the Tenant, I was unable to support the Complaint that the Member Agent was withholding the deposit or that they had not attempted to negotiate the return of the deposit from the Landlord.

I considered that the Complainant had suffered avoidable distress and inconvenience as a result of the Member Agents shortcomings in regard to the issuing of a copy of the Tenancy Agreement and I made an Award of compensation of £30.

Fixed Fees and Sales Particulars

The issues that are the subject of this Complaint are: - Inadequate explanation of the fixed fee agreement and shortcomings in service levels.

The Complainant in this case was the Seller. She was seeking reimbursement of the difference between the fee she paid (which was a fixed fee based on the initial asking price) and what would have been payable if the fee had varied in line with the eventual selling price. The Complainant also felt that she did not receive the level of service she had been led to expect.

The Member Agent had promised the Complainant a 'superior' service. However, from the start the wording of the

Case Summaries

sales particulars required correction, the photographs were disappointing and the plan of the Property was incorrect. The Complainant was an elderly lady, living a long way from the Property and she complained that she, or friends in her absence, were repeatedly called on to accompany viewings when she had been led to believe that all viewings would be accompanied by the Member Agent.

Over a period of six months, the price of the Property was reduced by £75,000, with only one viewer expressing an interest in that time. When a sale was then agreed the Seller had to reduce the price again to expedite the sale, due to the Buyers' property being down valued and them asking for a reduction. The Complainant also felt that she was not fully informed that the buyer's chain and that their timescales were longer than she had been led to believe.

In considering this case it was not possible to determine what aspect of the Member Agent's service was 'superior' or which exceeded standard expectations or the service routinely offered by other estate agents.

On the issue of the fixed fee agreement, whilst this was signed by the Complainant, I would accept that she had not fully appreciated that the initial fee quoted would be come payable regardless of the price finally achieved for the Property. Agents have a special duty of care to consumers whose age or lack of familiarity with the selling and buying process might disadvantage them, and I was not satisfied that the Complainant received a full or careful explanation of the details of the fixed fee agreement she was signing. In addition, I was very concerned that the sale price was so much less than the initial valuation. The result was that the Complainant faced a contractual liability which had been negotiated on the strength of an asking price which the market had shown to be hopelessly unachievable. This had the consequence of course of inflating the Member Agent's fee. Whether or not this was fair, the Member Agent stood to gain substantially from their error.

In conclusion, the agency agreement clearly stated the Member Agent's fixed fee and I considered that the Member Agent was contractually entitled to payment of that amount. However, I also considered that the initial asking price had been inflated, and that the Member Agent failed to properly explain to the Complainant that their fee would not reduce in the event that the Property sold for less than the asking price, taking into account the Complainant's relative vulnerability.

Aspects of the Member Agent's service and their handling of these Complaints fell short of the standard a seller client could reasonably expect and certainly did not live up to their claims of

a 'superior' service; several specific breaches of the OEA Code of Practice were also identified and were to be taken up with the Member Agent outside of this case review.

In supporting this Complaint, to address what I considered to be an actual financial loss suffered by the Complainant as a result of the Member Agent's lack of explanation of the fixed fee and their excessive valuation, and also to compensate her for the distress, aggravation and inconvenience caused by the Member Agent's failing in this regard, I made an Award of £2,500.

Staff

As of 31st December 2008



Title	Name
Ombudsman	Christopher Hamer
PA to Ombudsman	Natalie Hallett
Finance Manager	Sarah Davies
Finance Assistant	Anne Hall
Special Projects Manager	Julia Hawkins
Support Services Manager	Sue Hurst
Case Officers	Josephine Bailey Kate Chandler Colin Dixon Maria Evans Natalie Pughe Jane Reed Christine Rowland Jones
Case Administration Manager	Tracey Baldwin
Senior Case Administration Manager	Amanda Stiggants
Case Administration Team	Jo Beatty Alan Bowers Roz Butcher
Initial Enquiries Manager	Anya Browne
Initial Enquires Team	Sarah Andrews Kim Hilton Martin Noke Susan Russell Kimberley Saunders Annemarie Simpson-Wild
Membership Manager	Sarah Sartin
Membership Team	Laura Baldwin Jay Johnson Holly Myers Matthew Tucker

Independent Reviewer's Report



The Independent Reviewer's role is to investigate the standard of service provided by the OEA in any case where a user of the service (whether a private individual complaining about the conduct of a member firm or a member firm itself) remains dissatisfied after the established internal complaints procedure has been exhausted. In carrying out my task I am required to, and do, act completely independently of any influence from the OEA.

My terms of reference limit my consideration to service complaints or the service aspect of wider complaints. This covers the way complaints have been handled, including the procedures followed, the efficiency of the work of the Office and the conduct of its staff. However, I am not empowered to give an opinion on the merits of any case considered by the Ombudsman, or on his actual decision, or on any redress he orders.

If I uphold a service complaint I may recommend to the Ombudsman that an apology be made and/or that appropriate compensation be paid (equivalent to that which the OEA would itself award against a firm in similar circumstances) for any damage, distress or inconvenience caused by the shortfall in standard of service given. If the recommendation is not accepted by the Ombudsman I would refer the matter to the Council of the OEA. If the Council declines to comply with my recommendation, it would be required to give its reasons for so doing both to the complainant and to me, and to publish the reasons in its Annual Report.

There is no further appeal within the OEA Scheme against my decision, although a still dissatisfied complainant may thereafter continue the matter through the Courts.

Only two cases were referred to me during the year ended 31 December 2008, the first full year since my appointment on 1 September 2007 (none during that year).

Both of these Complainants were private individuals complaining about acts and/or omissions of Members in connection with the purchase of residential property. One was an actual purchaser, the other a prospective purchaser. In both cases the Ombudsman had found insufficient evidence to support the complaint, issued a Proposed Decision to that effect, received, considered and rejected Representation

against the Proposed Decision, and accordingly had issued a Final Decision rejecting the complaint. In both cases the Ombudsman had accepted and responded to further correspondence from the complainant in an attempt to clarify the reasons for his Decision, but the complainants had remained dissatisfied and had appealed to the Chairman of the Council. The Chairman had also been unable to support either of the complainants, who had finally appealed to me.

After detailed examination of the files and interviews with relevant members of OEA staff, in one case I detected no shortcomings in the standard of service given.

In the other case, although I again found that the Ombudsman dealt properly and fully with the original complaint in line with his Terms of Reference and internal procedures, I concluded that there had been some shortcomings in the handling of the complaint. I did not consider that the complainant had suffered any material loss as a result but I did believe that those shortcomings had unintentionally resulted in some degree of aggravation and distress to him. I recommended that an apology be made and a modest sum be paid as compensation. The Ombudsman accepted my recommendation and the compensation was paid accordingly.

I believe the tiny number of cases reaching me is a tribute to the comprehensive coverage and effectiveness of the OEA's internal complaints procedure.

Cyril Lanch
Independent Reviewer

Report from the Board

of the OEA Limited



The Role of the Board

The role of the Board is to:

- Manage the company affairs (not the office of the Ombudsman).
- Raise sufficient funds from members to meet the budget submitted by Council. The scheme is funded by an annual fee levied on members.
- Represent the views of members and deal with membership matters.
- Appoint two Board members to serve as Council members.

Membership.

2008 has been a testing year for agents with the number of properties sold significantly below those in previous years, in consequence a considerable number of residential sales offices have closed. By contrast lettings of residential property increased. This has had a significant impact on the membership numbers.

The number of Member Agents within the scheme rose by 17.4% to 6,322 companies or firms whilst the number of total offices rose by 2.8% to 12,696.

Sales Offices.

During the year the Office of Fair Trading appointed OEA as an Approved Redress Scheme under the Consumers, Estate Agents and Redress Act 2007 (CEARA). The result of CEARA was to require all residential agents as defined by the Estate Agents Act 1979 to register with or join an Approved Redress Scheme and in consequence we saw an increase in the number of Members. A small number of companies chose only to register rather than become full Members (152 out of 6,322).

In spite of the very difficult trading conditions the number of sales offices increased by 218 offices to 11,215. We believe that the requirement to register all firms will improve consumer's confidence and experience of the selling process.

The OFT recently announced a study into 'Home Buying and Selling' and hopes to report in about one year's time. OEA has attended an initial meeting and has been asked to comment and supply information to the OFT.

The Carsberg Report commissioned by the Royal Institution of Chartered Surveyors (RICS and the National Federation of Property Professionals (NFoPP) together with Professor Jones Report to the Department of Communities and Local Government have both highlighted the importance of transparency and alignment of the industry codes of practice and governance. OEA supports the principles of these views and is active in trying to ensure that competing Codes of Practice and processes are as clear as possible. It is in discussion with the Property Codes Compliance Board, for example, in this regard.

The OEA Code of Practice for residential agents is currently under review internally and with the Office of Fair Trading and other stakeholders. We anticipate this review being concluded in the first half of 2009.

Lettings.

We have seen a large increase in the voluntary Membership of the OEA Letting Redress Scheme with 5,100 registered offices as at January 2009. This represents 1,152 additional offices, an increase of 36% during 2008. The year has seen an increase in

Report from the Board

of the OEA Limited

the number of sales agents undertaking lettings and we have emphasised the importance of agents having proper knowledge and systems to deal with this aspect of their business.

All letting disputes referred to the Ombudsman are now dealt with directly by OEA with dedicated case officers. Letting offices are now a fast growing and important part of the OEA Scheme.

The Association of Residential Letting Agents (ARLA), part of NFoPP has confirmed that its Members should join an Ombudsman Scheme and we aim to have the majority of their Members signed into the OEA Scheme in the first half of 2009.

Scheme Expansion.

We have agreed that we will now take Members from The Institution of Business and Commercial Agents (ICBA) and NAEA International. We expect to see new Members from these NFoPP organisations during 2009.

A further area of expansion is with those agents who act as buying agents such as members of the Association of Relocation Agents who are required to join or register with an approved redress scheme. Some of their Members are already OEA Members but we anticipate further applications.

Compliance Monitoring.

We continue to monitor our member agents for both standards of satisfaction and code compliance by a third party contractor, Referenceline. This continues to show a slight improvement year on year. We also trialled a survey of consumers who failed to buy or sell through an agent with whom they were registered. This was more difficult to administer and the results were a little lower but similar to our results from buyers and sellers.

Where there is uncertainty in the monitoring results we continue to undertake mystery shopping by a separate contractor.

The awareness of the Scheme continues to increase both within the industry and from consumers. It is difficult, however, for us to maintain awareness amongst consumers given that the majority of people only move home infrequently. It is an area we continue to work on.

A fuller analysis is shown on pages 34 to 35 and the results of surveys are posted on our website

Looking Forward.

We believe that the sales market will continue to be tough for some time and that we will see further estate agency offices close. A growing feature is both franchise and internet agents who may not have high street premises. The administration of these agents presents some challenges however we continue to keep a close eye on developments in the market place.

By contrast, we expect to see continued growth in the lettings field with many firms specialising in this area; we believe this will be the case for many years to come.

Bill McClintock
Chairman of the Board

(PA to Chairman of the Board: Janet Fitzpatrick)

Financial Report

OEA Limited, 31 December 2008

Extract from the Accounts



Ombudsman for Estate Agents - A Company Limited by Guarantee Profit and Loss Account for the year ended 31 December 2008

	2008 £	2007 £
Turnover	1,723,377	1,438,509
Cost of Sales	(4,672)	(12,374)
Gross profit	1,718,705	1,426,135
Administrative expenses	(1,496,243)	(1,102,808)
Operating surplus	222,462	323,327
Other interest receivable and similar income	65,672	19,984
Surplus on ordinary activities before taxation	288,134	343,311
Tax on surplus on ordinary activities	(13,600)	(3,948)
Total incoming resources	274,534	339,363

Balance Sheet at 31 December 2008

	2008 £	2007 £
Fixed assets		
Tangible fixed assets	56,831	47,111
Current assets		
Stocks	7,921	8,976
Debtors	125,850	106,976
Cash at bank	1,283,776	936,718
	1,417,547	1,052,670
Creditors amounts falling due within one year	(676,832)	(576,769)
Net Current assets	740,715	475,901
TOTAL NET ASSETS	797,546	523,012
Capital and reserves		
Retained reserves	797,546	523,012
Members' funds	797,546	523,012

Approved for and on behalf of the Board 23 February 2009, **W A McClintock - Director**

Summary of accounts:

These summarised accounts may not contain sufficient information to allow for a full understanding of the financial affairs of the Company. For further information, the full accounts, including the unqualified auditor's report on those accounts and the Directors' Annual Report, should be consulted. Copies of these can be obtained from:
The Ombudsman for Estate Agents (Membership Department)
Beckett House, 4 Bridge Street, Salisbury, Wiltshire, SP1 2LX

Auditor's Statement

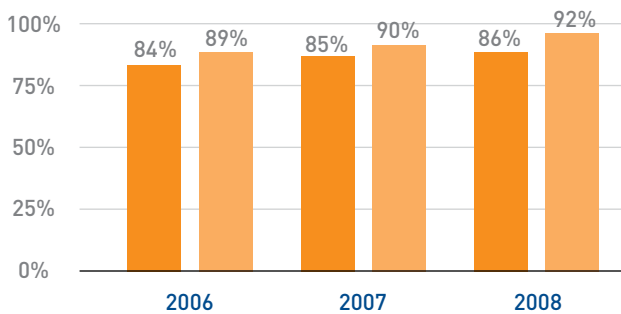
As Auditors to the Company we have reviewed the summarised accounts above and consider that they are consistent with the full accounts, on which we gave our unqualified opinion.

Moore Stephens (South) LLP

Date of approval of the full accounts 23 February 2009

Compliance Tables

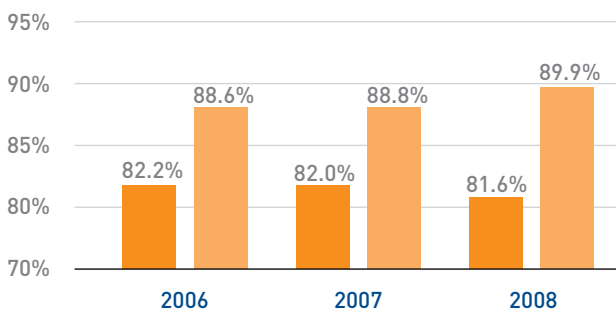
Satisfaction



Buyers
Sellers

- Acted professionally at all times
- Was friendly and understood my requirements
- Showed good local knowledge of local market conditions
- Helped in the negotiations between buyers and seller

Code compliance



Buyers
Sellers

Sellers

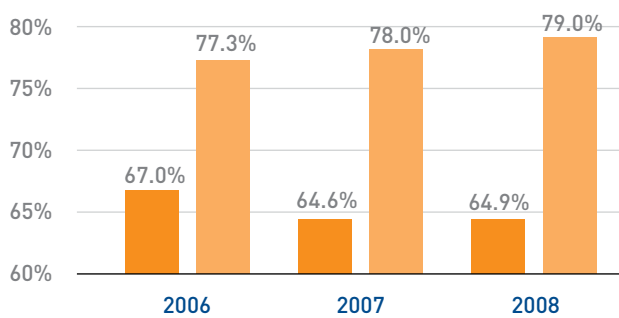
OEA Membership
Business Terms
Services for buyers
Accuracy of particulars
Viewing arrangements
Offers confirmed
Continuation of marketing

Buyers

OEA Membership
Continuation of Marketing
Accurate information
No conditions



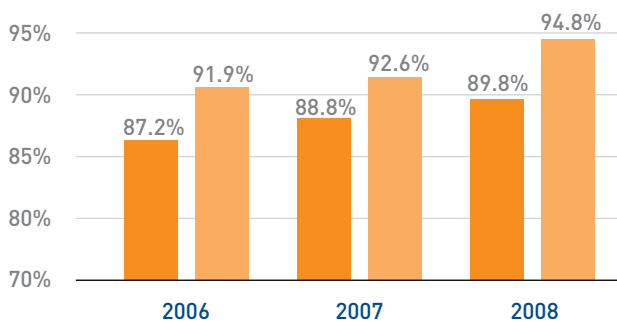
Awareness of the OEA



Buyers
Sellers

'Did the firm make you aware of their membership of the Ombudsman Scheme?'

Recommended



Buyers
Sellers

Would you recommend this firm to friends?



Ombudsman for Estate Agents
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