



Ombudsman for Estate Agents



▶ About the OEA

The Ombudsman for Estate Agents (OEA) Scheme was established on 1 January 1998. The Scheme 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; and to other independent estate agents who can provide the necessary references and carry appropriate Professional Indemnity cover.

The OEA offers an independent service for the resolution of disputes between member agencies and buyers, sellers, tenants or landlords of residential property in the UK. The Scheme is also approved under the Housing Act 2004 as a redress scheme in relation to Home Information Pack disputes.

The Ombudsman is entirely independent of member agencies and he reports to an independent Council. He provides a fair and impartial resolution of disputes which fall within his Terms of Reference. Resolutions are designed to achieve a full and final settlement to the dispute and the Ombudsman can, where appropriate make an award of financial compensation up to £25,000. The Ombudsman will not normally review a case until the internal complaints procedure of the member agent has been exhausted. The service is free to complainants.

Copies of the Ombudsman's Terms of Reference, the Codes of Practice, Consumer Guides and other documents about the operation of the Scheme can be obtained from the OEA at:

Beckett House
4 Bridge Street
Salisbury
Wiltshire
SP1 2LX

Or by telephoning:

01722 333306
(enquiry lines open 09.30am - 4.30pm)

Or from our website: www.oea.co.uk

A full list of member agents is available on request from the office or on the website.

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► Introduction

This, my second quarterly report, follows in rapid succession to my Annual Report for 2007 in which I updated member agents and other stakeholders on the developments in legislation and elsewhere that had a bearing on how the Ombudsman for Estate Agents (OEA) scheme would look in the future.

The most significant development of the last quarter has been the announcement from the Office of Fair Trading that it has delayed the approval and implementation of the Consumers, Estate Agents and Redress Act 2007 provisions in regard to redress schemes for estate agents. The implementation of the Act will mean that all firms offering estate agency services that bring them within the definition contained in Section 1(1) of the Estate Agents Act 1979 must join an approved redress scheme. It looks likely that implementation will now take place in October of this year.

Workload

During the first quarter of 2008 workload has increased across all enquiries and for new disputes by around 10% over the final quarter of 2007. In all 289 new disputes were referred to me and of this figure 69 were in relation to Lettings. During the whole of 2007 I received 99 Lettings disputes and I therefore expect this aspect of my jurisdiction to be a much more significant commitment during 2008.

The number of enquiries on matters within my Terms of Reference was 1,588, an 10% increase on the previous quarter with, again, a marked growth in work related to Lettings. Nearly one-third of these enquiries involved Lettings issues.

My office closed 236 cases. I found in favour (wholly or in part) of complainants in 69% of cases. My awards totalled nearly £122,000.

A more detailed analysis of work for the period 1 January 2008 to 31 March 2008 appears on the next page.

Membership

Membership of the scheme now stands at 5,683 firms operating out of 12,672 offices.

Case summaries

A selection of summaries of cases dealt with since the start of the year appears later on in this document. Note also that I regularly place and update summaries of cases on the website at www.oea.co.uk.

Christopher J Hamer
Ombudsman

25 April 2008

► General Statistics

The following is a brief analysis of the workload of the OEA during the period 1st January 2008 to 31st March 2008

Enquiries		Q1 2008	Q4 2007
General		421	389
Non-member	(sales)	358	
	(lettings)	450	741*
Outside Terms of Ref	(sales)	138	
	(lettings)	28	161*
Within Terms of Ref	(sales)	1140	1122
	(lettings)	448	321
	(HIP)	67	0**
	Total	2983	2734

Disputes		Q1 2008	Q4 2007
New Cases	(sales)	220	227
New Cases	(lettings)	69	37
Cases closed	(sales)	217	213
<i>Withdrawn</i>		1	0
<i>Against Complainant</i>		64	84
<i>For Complainant</i>		152	126
Cases closed	(lettings)	19	17
<i>Withdrawn</i>		0	0
<i>Against Complainant</i>		6	6
<i>For Complainant</i>		13	11

* Figures for Sales and Lettings enquiries not recorded separately

** Figures for HIPs not recorded separately

► Case Summaries - Sales

Restrictive Covenant

The Complainant advised the Agent that she wished to purchase a property in order to rent it out. The Complainant viewed a property and made an offer of £149,000, which was accepted by the Seller. Three weeks later the Complainant received the results of a survey she had commissioned and this revealed that the property had previously been a Local Authority property. The property was subject to a covenant which restricted who the property could be rented to. Consequently, the Complainant decided to withdraw her offer and considered the Agent to have been in breach of the Property Misdescriptions Act and the OEA Code of Practice by not disclosing these facts. This Complaint was not supported as the Agent had no obligation to reveal this information even if he could have been reasonably expected to be aware of it.

Sales Particulars

The Seller Complainant requested that the Agent amend the Sales Particulars which showed that a dining room cupboard was included in the sale price. The cupboard was of sentimental value and the Seller had no intention of leaving it within the Property. The Agent failed to amend the Particulars. The Seller then had to agree with the Buyer that other fixtures and fittings would be included in the selling price as compensation for the removal of the cupboard. I found for the Complainant primarily supported by the fact that the Agent had failed to agree the draft Sales Particulars with the Seller to ensure they were correct. This led to confusion to the transaction as it was the expectation of the Buyer that the cupboard would remain.

Two further complaints of communication failures and the fact that the Agent failed to financially qualify the Buyer were not supported due to the comprehensive Progress Notes which evidenced that the Agent acted appropriately in this regard.

The Agent was severely criticised by myself for failing to launch any form of investigation throughout the in-house complaint handling process which extended over a 7 month period. The total award made was £800.

Home Information Packs

The Complainants put their property on the market as they had seen another property which they liked. They signed up with the Agent to have a free HIP as they had also instructed the in-house conveyancing service. The Agency Agreement clearly described the circumstances under which a fee would become payable for the HIP. These were:-

- * If the seller did not want to use the conveyancing service
- * If the property was withdrawn from the market
- * If another agent was instructed
- * If the agency agreement was terminated.

For reasons which had not been stated, the Complainants decided to instruct the Agent to stop marketing the property five days after being instructed. They also requested that the Energy Efficiency Survey to be put on hold. The Agent did advise the Complainants that they would still have to pay for the HIP as the Agent had already instructed the provider. The Agent sent out their invoice and a number of days later received a letter of complaint. The primary complaint was that the Complainants believed that the HIP was free therefore the Agent was not entitled to the charges that they were making. They also complained that the Agent never told them about the charges and that there was no breakdown as to how the fee was made up.

I concluded that the Agency Agreement clearly explained what the fee would be and when it would be charged. I did not support the complaints made.

► Case Summaries - Sales

Agency Agreements

The Complainant alleged that she agreed with the Agent to revert her Agency Agreement from a Multi Agency Agreement to a Sole Agency Agreement and reduce the Commission Fee to 1%. The Agent denied that this conversation took place.

During the course of my examination I found that there was only one Agency Agreement and that was for a Multi Agency Agreement. Furthermore, 2 months before Exchange of Contracts took place, it was evident that the Agent had written to the Complainant, informing him of the commission fee, at the Multi Agency rate, if the sale proceeded to the buyers. The Complainant continued with the sale.

I did not support the Complaint.

Viewings

The Complainant was a Seller who lived some distance from the property, which was empty and had instructed the agent to conduct all viewings. The garage at the property was broken into and vandalised. The Complainant considered that the agent had failed to secure the garage door and hence was responsible for the resulting damage. The agent was adamant that they had secured the garage. I was unable to come to a judgment on this issue, having no knowledge of whether the garage door was locked or whether the entry had occurred by other means. However, the agent had received a telephone call from a neighbour advising of the situation but had failed to take any action until the same neighbour telephoned again two days later. For this reason the complaint was supported. The agent owed a duty of care to the Seller and this would have included a duty to inform him promptly that the garage had been broken into. Any complaints concerning the security of a property are taken extremely seriously and an award of £200 was made for that part of the complaint that was supported.

Submission of Offers

The Complainants made an offer for the property that was subject to them obtaining planning permission to make alterations to the Property. This offer was accepted by the sellers. The Complainant then submitted an alternative lower offer that was not conditional on planning permission, whilst leaving their already accepted offer in place. The Sellers decided to instruct the estate agent to remarket the property and as a result the Complainants increased their un-conditional offer to secure the property. The sale proceeded to exchange of contracts and completion. The Complainants stated that their unconditional offers were not properly presented to the Sellers and they were not advised of the Sellers' decision to remarket the Property. The estate agent stated that all offers were presented to the Sellers and that the Complainants were told verbally about remarketing. The Branch File reveals no record of offers being submitted in writing to the Sellers and no record of the Sellers being advised in writing about remarketing as required by the OEA Code of Practice. I considered that the estate agent had mishandled offers/negotiations and that they had failed to inform the Complainants in writing about remarketing the property. I supported an element of a further complaint that the estate agent did not deal with the Complaints in accordance with the timetable set out in the OEA Code of Practice. I made an Award totalling £1,300.

► Case Summaries - Lettings

Management Agreement

The Complainant was the Landlord who alleged that the Agent, who was under instruction as a management agent, had been grossly negligent and had mis-conducted themselves. The complainant was seeking the return of the Management fees which were in excess of £800 by way of compensation. The Complainant was living overseas and had instructed the Agent on a full management agreement.

The dispute had 5 issues:

- * Part of the ceiling had fallen down in the bedroom and had not been fixed for eight months.
- * The gas certificate required, was due to be renewed on 27 January but still had not been done by 5 July
- * The agent refused to release the tenants deposit even though the tenant and landlord agreed it could be released
- * The only inspection took place after the Complainant had visited
- * The Complainant was never provided with a copy of the tenancy agreement and inventory

I concluded that the Agent did not deliver a service which was fully in accordance with the OEA Code of Practice for Residential Letting Agents' or in accordance with what is considered best practice and I upheld the complaint. I took the view from reading the evidence, that the Agent having realised their failings sought to claim that their actions were in accordance with the Complainant's instructions or conversely that they had no instructions to act. At no point could I see that the Agent sought to confirm existing instructions or seek further instructions from the Complainant.

I awarded £500 as the Complainant had received some benefit from the Agent's service albeit that there had been failings on their part.

Return of Property

The Complainant was the Tenant, who had rented the property for 4 years. The Complainant alleged that the Agent failed to return his deposit in full only producing invoices for work carried out after he complained and these included cleaning the bathroom when this had not been raised in the first place. The Agent also advised that there would be an administration fee for renewing an earlier tenancy which was also deducted from the deposit.

The Complainant claimed that he had returned the property in the same state that he received it. I explained that the tenancy agreement allowed the tenant's deposit to be used to compensate the landlords for the breaches of the tenants' obligations. The Agents held the deposit as stakeholder and could not therefore return the disputed amount to the Complainant without the consent of the landlords. However, the OEA Code of Practice required the Agent to seek both parties' agreement in writing as to how to disburse the deposit and I had not seen any evidence to show that the Agents actively sought the Complainant's consent. It appeared that the Agents simply wrote to the Complainant with a list of items, which the inventory check out stated needed to be remedied.

I agreed with the Complainant that he was only obliged to return the property to the original condition that the property had been in, at the commencement of the tenancy agreement. The initial inventory appeared to give no indication in respect of the condition of the property at the start of the first tenancy in June 2002 and therefore it is difficult to compare the condition of the property at the tenancy end when the final check out was taken in June 2006. The last inspection visit reported that the property was found in a good condition.

With regard to the administration fee for the tenancy renewal I saw no evidence that the Complainant was obliged to pay for this under the terms of the tenancy agreement, or that the Agent was permitted to deduct this from the deposit.

I made an Award of £206 which reflected the reimbursement of the administration fee and the aggravation and distress the Complainant had suffered.

▶ Staff

as at 31st March 2008

Title	Name
Ombudsman	Christopher J Hamer
PA to Ombudsman	Natalie Hallett
Case Officers	Mary Birch
	Kate Chandler
	Colin Dixon
	Maria Evans
	Natalie Pughe
	Jane Reed
	Joanna Regan
	Christine Rowland-Jones
Finance Manager	Martin Brown
Finance Assistant	Anne Hall
HR Manager	Gail Newell
Initial Enquiries and Facilities Manager	Sue Hurst
Initial Enquiries Supervisor.....	Anya Browne
Initial Enquiries Team	Sarah Andrews
	Holly Myer
	Kim Hilton
	Martin Noke
	Susan Russell
	Annemarie Simpson-Wild
Case Administration Manager	Tracey Baldwin
Case Administration Team.....	Joanne Beatty
	Roz Butcher
	Amanda Stiggants
Membership Manager.....	Sarah Sartin
Membership Team	Laura Baldwin
	Vicki Brewis
	Jay Johnson





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