

The Property Ombudsman

2011

INTERIM REPORT 2



# Interim Report

Interim 2 2011

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## About The Property Ombudsman

The jurisdiction of The Property Ombudsman (TPO) extends to the resolution of disputes in relation to residential sales, lettings, small commercial transactions, UK based international agents, residential leasehold management companies and chattels auctions.

TPO provides an independent service for resolving disputes between member agencies and buyers, sellers, landlords, leaseholders, lessees and tenants of property in the UK.

The scheme has gained the status of an OFT Approved Estate Agents Redress scheme under the provisions of the Consumer's Estate Agents and Redress Act 2007.

The Ombudsman is entirely independent of its members and reports to a Council which is likewise independent of those members. 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.

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 TPO at the address shown below. They are also available on the TPO website ([www.tpos.co.uk](http://www.tpos.co.uk)) together with previous annual and interim reports, an explanation of governance arrangements and a full list of member agents.

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# Introduction



Figures relating to my workload which are shown later in this report indicate that since the start of January 2011 the number of cases referred to me continues to increase in relation to lettings, being 25% higher than the equivalent period last year. Sales referrals by contrast are starting to slow down. The proportion of my work related to sales is now 43%, lettings 57%, contrasting with 2010 where the split was 49% sales, 51% lettings.

Most particularly in this interim report I am relieved to be able to report some progress in relation to the approval of the Codes of Practice by the OFT. That body has granted Stage 1 approval of the Lettings Code, meaning that we now need to enter a period of monitoring member agents' performance against the standards laid down in the Code. That monitoring is actually conducted by the Board of TPO rather than by my office as the Board is the Code sponsor. Sales agents will be well aware of the process which has generally resulted in positive results for the individual firms. The OFT has, after a somewhat extended period, also approved amendments to the Code of Practice for Residential Sales.

Issue of the Codes of Practice has given rise to a few comments and questions about some of the obligations placed on firms and how practical these obligations might be to implement and a word of explanation might be helpful. The Code of Practice lays down the standards that should be maintained but when I interpret the Code I do apply realism. If, for example, an agent has 'technically' breached the Code, but their action has had no real impact on the consumer, or the agent had acted entirely appropriately in the specific circumstances, then I will not support a complaint that someone has been disadvantaged. Nonetheless the Codes are designed to reflect the practicalities of day to day business and the views expressed by agents at this time will be considered and if an amendment to either Code is genuinely necessary then that is what will happen.

In May I was invited to speak at the European Real Estate Congress in Berlin by the Immobilienverband Deutschland (IVD), the German equivalent of the National Association of Estate Agents.

In Germany The Property Ombudsman is a facility provided by the IVD to its members and whilst the Ombudsman Dr Peter Breiholdt is able to decide matters impartially the IVD does exercise a degree of control over the scheme. The IVD and the industry in Germany recognise that in order to expand the

Ombudsman scheme across all participants in the real estate sector in that country it has to be clearly independent and therefore has to be separately governed. The purpose of my presentation was to describe how the UK TPO was established, how the structure allows for complete independence and after 20 years of experience, the approach taken to cases and examples of issues that arise.

Speaking at the same session was David Mair from the EU Commission, describing the Commission's policy towards alternative dispute resolution, Dr Peter Breiholdt the German Property Ombudsman and Anton Holzapel, Austrian Ombudsman.

There were many expressions of interest in the UK model and the concept. I explained that by following the standards laid down in the Codes of Practice, by giving feedback to agents on the issues that arise and generally through promoting best practice the TPO had contributed towards an improvement in estate agency standards.

I was honoured to be asked to speak at this event and I hope I was able to show how the estate agency sector in the UK through supporting the TPO is well advanced in taking customer service seriously and in adhering to standards of business operation. Now we have met, the various Ombudsmen at the Congress have committed to liaising on important matters and assisting other countries to introduce such schemes.

I have included as part of this report summaries of cases I have been asked to resolve over the last four months. I have placed a particular emphasis on Property Misdescription Act cases in the sales 'category' whilst we await the response from BIS on its consultation paper considering the possibility of repealing that Act in favour of enforcement action being taken under the Consumer Protection from Unfair Trading Regulations 2008.

**Christopher J Hamer**  
**Ombudsman**

# General Statistics

Interim 1 2011 / Interim 2 2011

Enquiries		Interim 1 2011 1 Jan 11 - 30 Apr 11	Interim 2 2011 1 May 11 - 31 Aug 11
<b>General</b>		288	449
<b>Non-member</b>	Sales	127	218
	Lettings	632	673
<b>Outside Terms of Reference</b>	Sales	141	110
	Lettings	256	212
<b>Within Terms of Reference</b>	Sales	928	1244
	Lettings	1530	1839
<b>Insufficient Information</b>		238	169
<b>Total</b>		<b>4140</b>	<b>4914</b>

New Cases - Interim 1 2011

**190**

SALES

**258**

LETTINGS

New Cases - Interim 2 2011

**197**

SALES

**275**

LETTINGS

Sales	Interim 1 2011	Interim 2 2011
Cases Closed	204	200
Withdrawn	2	1
Against Complainant	78	77
For Complainant	109	112
Conciliation/MA Comp Resolved	15	10

Lettings	Interim 1 2011	Interim 2 2011
Cases Closed	247	267
Withdrawn	2	2
Against Complainant	76	76
For Complainant	153	176
Conciliation/MA Comp Resolved	16	13

# Case Summaries

Interim 2 2011



## SALES - PROPERTY MISDESCRIPTIONS

### Case A – Wrong Tenure

The Complainants, who were potential buyers, asserted that the agent had misrepresented the property by advertising its tenure as freehold when it was in fact leasehold. The Complainants stated that this error was first brought to their attention by their solicitor once conveyancing had begun and, as the property no longer suited their needs, they withdrew from the sale at that point. The Complainants then complained to the agent, requesting that their solicitor's costs be reimbursed. In response to the complaint, the agent acknowledged that the sales particulars stated that the property was being offered on a freehold basis but referred to the disclaimer on the sales particulars which they considered absolved them of any liability or claim in respect of the content of that document.

I observed that the Agency Agreement, signed by the seller, clearly recorded that the property was to be offered on a leasehold basis. As the seller had provided this information to the agent prior to the sales particulars being produced, I considered that the agent did have a responsibility to ensure that their sales particulars contained accurate information. Furthermore, I made the point that I did not consider that disclaimers, such as that referred to by the agent, absolved agents of their responsibilities to take reasonable steps to ensure that sales particulars are accurate and not misleading. I, therefore, supported the complaint.

In addition, although the Complainants did not raise specific concerns regarding the manner in which the agent had dealt with their complaint, I observed that the agent had failed to acknowledge or respond to the complaint within eight weeks, after having advised my Office that they would do so. I was, therefore, critical of the agent and pointed out that I considered that their shortcoming had served to aggravate the situation.

Overall, I made an award of £300 which included the Complainants' solicitor's costs and an amount reflecting the avoidable aggravation and inconvenience the agent's failings had caused.

### Case B – Gas/Oil Fired Heating

A year after the property was sold, the Complainants (who were the buyers) claimed that the agent's sales particulars were inaccurate as they had described the property as benefitting

from gas central heating on three levels when, in fact, it was oil fired central heating. The Complainants considered that the agent was liable for this error and requested that they pay for the installation of gas central heating as recompense. The agent acknowledged that they had made an error when producing the sales particulars and offered a goodwill gesture of £300 which was rejected by the Complainants.

My investigation concluded that due to a typographical error on the agent's part, the sales particulars did incorrectly describe the property as having gas central heating rather than oil fired central heating, which was in breach of Paragraph 5h of the TPO Code of Practice. Accordingly, I was persuaded that the error had contributed to a degree of avoidable aggravation, distress and inconvenience suffered by the Complainants.

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**“The agent acknowledged that they had made an error when producing the sales particulars and offered a goodwill gesture of £300 which was rejected by the Complainants.”**

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However, it was also the case that the sales particulars pointed out that any services and central heating systems had not been tested and they advised buyers to obtain the appropriate verification from their solicitor or surveyor. Furthermore, as well as describing gas central heating, the sales particulars also referred to an external boiler room which was used for oil fired central heating. Given that the Complainants had a responsibility to ask questions to ensure that the property was fit for their purposes before they proceeded with the purchase, in light of this information, I pointed out that if the type of fuel used to heat the property was particularly important to them, it was reasonable to have expected them to have verified the heating arrangements and any gas supply prior to buying the property. I did not consider it reasonable of the Complainants to have simply relied on the information included in the sales particulars. Indeed, it was apparent that the Complainants had viewed the property twice before making an offer and had commissioned a survey which was produced four months before the transaction completed. In these circumstances, I did not consider it reasonable for

# Case Summaries

Interim 2 2011

the Complainants to seek the costs of installing gas central heating from the agent.

I did, however, support an element of the complaint to the extent that agent's inaccurate description of the heating system in the sales particulars contributed towards, but was not entirely responsible for, the aggravation, distress and inconvenience suffered by the Complainants. I also took into account the time it had taken for the Complainants to raise the issue with the agent. As such, I concluded that the agent's goodwill offer of £300 was a reasonable one and I made an equivalent award to the Complainants.

## Case C – Bedroom Planning Permission

In this case, the Complainants (who were the buyers) raised a complaint against the agent ten months after they had completed the purchase of the property. The Complainants asserted that the sales particulars had misled them into buying the property on the basis that it had five bedrooms, when it later transpired that planning permission had only been granted for three bedrooms.

The property itself was a chalet style bungalow which was in the process of being constructed by the seller at the time it was being marketed. The agent's file contained information which indicated that the local Council had provided planning permission for the property based on architect plans which had been submitted to them. The only architect plans included in the agent's file recorded that the property was to be constructed with four bedrooms, one of which was located on the first floor. The file also included a number of different sales particulars, one of which recorded the property as having five bedrooms.

The sales particulars provided by the Complainants also recorded the property as benefitting from five bedrooms, however, attached to those particulars were architect plans which showed the property to have a maximum of four bedrooms, one of which was located on the first floor. Furthermore, it was apparent from the Complainants' submissions that they had made their own enquiries with the local council, prior to instructing solicitors, and had found that planning permission for the first floor had not yet been

provided. They then communicated this information to the agent (who amended the sales particulars) and proceeded with the transaction.

Overall, I was critical of the agent for failing to take reasonable steps to ensure that the sales particulars were accurate and not misleading. However, whilst I supported the complaint that the agent had incorrectly advertised the property as having five bedrooms, I considered that the Complainants were fully aware of the potential planning issue before they committed themselves to the purchase. I, therefore, did not consider that the agent's error had caused the Complainants any avoidable distress, aggravation or inconvenience to the extent that merited an award.

## Case D – Parking

Following the completion of the transaction, the Complainant (the buyer) claimed that the sales particulars contained inaccuracies relating to the availability of off-street parking at the property and in respect of a description of an electric fire located in the property. The Complainant asserted that, despite the sales particulars describing two off road car parking spaces, she had since found that neither of these spaces were allocated to the property and that access to parking on the paved garden area (which did form part of the property) was reliant upon the off-road space directly in front of the garden being unoccupied. Regarding the fire, the Complainant pointed out that the sales particulars had incorrectly described this appliance as a gas coal effect fire, when it was in fact an electric fire. The Complainant also questioned why the sales particulars provided to her following her complaint being raised differed from those she was provided with at the outset of the transaction.

Whilst the agent acknowledged that the sales particulars were incorrect in respect of the electric fire, concerning the car parking spaces, they contended that, as the Complainant's daughter was able to park her vehicle in the space in front of the garden for a number of months seemingly without complaint from the other residents, the property was correctly described as having parking for two cars, being the paved garden area and the parking space in front of the garden.



I found that the sales particulars were inaccurate in both these respects. In particular, I observed that the inaccuracy regarding the parking had been highlighted by the sellers on the draft sales particulars. I pointed out that I would have expected the agent to have exercised care when advertising off road parking at the property and to have taken steps to verify that the advertised parking belonged to the property and was accessible at all times. In this case, while it was not disputed that the paved garden area belonged to the property, access to that area was dependent upon the space in front of the garden being unoccupied. Irrespective of whether or not the Complainant's daughter was able to use this space for a period of time, it did not belong to the property. As such, I considered that the agent had failed to comply with their obligation under Paragraph 5h of the TPO Code of Practice as they had not taken reasonable steps to ensure that all of the statements they had made about the property were accurate and not misleading. I, therefore, supported both of elements of the complaint. However, I also pointed out the Complainant had a responsibility to ask questions to ensure that the property was fit for her purposes before she proceeded with the purchase.

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**“I observed that the inaccuracy regarding the parking had been highlighted by the sellers on the draft sales particulars. I pointed out that I would have expected the agent to have exercised care when advertising off road parking at the property and to have taken steps to verify that the advertised parking belonged to the property and was accessible at all times.”**

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Regarding the differences between the two sets of sales particulars, it was apparent from the agent's file that the amendments were made to reflect the sellers' subsequent comments. However, I was critical of the agent for failing to demonstrate that they had issued the amended set of sales particulars to the Complainant.

Whilst the agent had made a goodwill offer of £150, I did not consider that this represented appropriate compensation for

avoidable inconvenience that the errors in the sales particulars had caused the Complainant. Accordingly, I made an award of £250.

### Case E – Floor Plans

The Complainant, who was the buyer, complained that the floor plan which was included in the sales particulars for the property was incorrect. The Complainant explained that he had wanted to partition off part of the kitchen in order to make another bedroom but that, after purchasing the property, he discovered that the dimensions given for the kitchen in the agent's sales particulars were incorrect and that the room was smaller than stated. The Complainant also asserted that the amount of available floor space was a feature that the agent had used to justify the asking price of the property. Accordingly, the Complainant claimed that the agent had deliberately and knowingly misled him and that, as a result, he had paid more money for the property than it was actually worth.

The agent responded by acknowledging that, upon contacting the floor planners who had measured the property on their behalf, it had transpired that the floor planner's hand written note recording the length of the kitchen was misread by the third party company who drew up the plans. The floor planner then checked the details on the final floor plan but did not notice the error. The agent explained that they also failed to spot this error and offered their apologies to the Complainant. However, the agent contested the allegation that they had used the incorrect floor area to verbally justify the asking price of the property, explaining that in carrying out their market appraisal, they had taken into account other factors such as location, orientation, amenities and the condition of the property.

Whilst I criticised the agent for failing to properly check the sales particulars and to identify the error, I was satisfied that this was a genuine mistake and that the agent had not set out to deliberately or knowingly mislead potential buyers. I also observed that the agent's file recorded that the Complainant had viewed the property on no less than six occasions before he committed himself at exchange of contracts. Furthermore, the recorded purpose of one of these viewings was take measurements and it was also the case that the Complainant had instructed a surveyor to provide a report on the property.

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I explained that the Complainant had a duty under the principle of 'caveat emptor' to ensure that the property met with his requirements and was suitable for his purpose. Given the number of times that the Complainant had viewed the property and the fact that he had obtained a survey, I determined that he had been provided with ample opportunity to satisfy himself whether he was able to carry out his plans for the kitchen. As such, I was not persuaded that the error on the floor plan was of the extent that merited an award of financial compensation from the agent and I considered their apology to be appropriate.

Regarding the allegation of whether the agent had sought to use the floor area as a factor in justifying the asking price, I pointed out that I was not able to reach a decision concerning precisely what was said to whom during conversations that I was not party to.

Overall, I did not support the Complainant's call for financial compensation from the agent.

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**"I explained that the Complainant had a duty under the principle of 'caveat emptor' to ensure that the property met with his requirements and was suitable for his purpose"**

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## Case F – Construction Type

In this case the Complainants, who were the potential buyers, complained that the agent had misled them regarding the construction type of the property they wished to purchase to the extent that they had incurred avoidable and unnecessary expenses, prior to withdrawing from the transaction. The Complainants claimed that the agent had informed them that the property was not of a non-standard construction and, as this was an important factor to them, they proceeded to put forward an acceptable offer based on that information. The Complainants went on to explain that, when they received the survey several weeks after solicitors had been instructed, this revealed that the property was indeed of a non-standard construction. Furthermore, the Complainants asserted that the agent had informed them that a previous

potential buyer's survey they had seen had revealed no problems with the property.

In response to the Complainants' allegations, the agent did not dispute that they had informed them that a previous survey carried out by other potential buyers had revealed no issues of concern. Furthermore, they stated that, upon being asked about the property's construction type they telephoned one of the sellers who informed them that, as far as he was aware, the property was constructed from bricks.

My examination of the agent's file found no information which supported their claim that they had contacted one of the sellers who had informed them of his opinion of the property's construction type. Indeed, it was also the case that the agent's file included no information in relation to the results of any previous survey carried out on the property. I was, therefore, critical of the agent for making such claims and considered that their shortcomings had caused the Complainants a degree of avoidable distress, aggravation and inconvenience.

However, I pointed out to the Complainants that, as potential buyers, it was their responsibility to ensure what the property they wished to purchase suited their purpose. The Complainants had emphasised how important the construction type of the property was to them. I, therefore, made the point that I would have considered it prudent of them to have sought an independent opinion on that issue before they put forward an offer for the property. Accordingly, I was not persuaded that the agent's actions had directly resulted in the Complainants experiencing financial loss in terms of legal or survey costs.

I did, however, support the complaint to the extent that the agent had failed to provide any information to support their claims regarding a previous survey and their communication with one of the sellers and, as such, made an award of £250.



## LETTINGS

### Case A - Holding Deposit

The Complainant, who was a potential tenant, raised a complaint against the agent concerning the manner in which they had dealt with his offer and his subsequent referencing, which he considered did not entitle them to retain the holding deposit. The Complainant argued that the agent had not explained the terms and conditions of the holding deposit before he had paid those monies and that, as it was the landlord who had refused his offer, he was entitled to a full refund of his holding deposit. The agent contested the Complainant's claim and maintained their position that they were entitled to retain the whole of the holding deposit, given that the Complainant had not provided satisfactory references.

My examination of the agent's file found that the Complainant had signed a holding deposit agreement at the point at which he had paid the first of two parts of the holding deposit. The agreement set out the terms under which the holding deposit would be retained. One of these terms was the failure of the Complainant to provide suitable references. Both parties acknowledged that, following the agent carrying out the referencing process (which the Complainant had failed), they had agreed for an independent referencing firm to carry out a further referencing check. I considered the report provided from the referencing provider which concluded that the Complainant was only suitable as a tenant if he could provide a guarantor, as his income was deemed to be insufficient to pay the rent. I observed that the Complainant had not disputed that, when faced with need to provide a guarantor to pass the referencing process and to, therefore, secure the tenancy, he had refused to do so. However, the terms and conditions of the agreement set out that the agent would take the holding deposit in two parts; the first when the offer was made and the second when the landlord had accepted the Complainant's offer. Given that the landlord had not accepted the Complainant's offer for the property unconditionally at any point, I concluded that the agent was not entitled to take receipt of the second part of the holding deposit.

I, therefore, supported the complaint to that extent and made an award of £650 to reflect the second part of the holding deposit and a degree of avoidable distress, aggravation and inconvenience caused to the Complainant.

### Case B - Holding Deposit

The Complainants, who were prospective tenants, made a number of complaints against the agent following the payment of a holding deposit and the property being subsequently let to another prospective tenant which, they said, had caused them unnecessary and avoidable expenses. The Complainants claimed that the property continued to be marketed for a period of ten days, after they had paid the agent a holding deposit and that, as a result, this had attracted another potential tenant to whom the property was subsequently let.

During my consideration of the submissions provided by the agent, it became clear that it was the decision of the landlords to continue to market the property and to let it to one of their existing tenants. It was also apparent that the agent had no control over this decision. Although the Complainants expected the agent to cover their 'out of pocket expenses', I emphasised that these expenses had directly resulted from the actions of the landlord. However, I did direct the agent to return the holding deposit paid by the Complainants, as it was clearly evident that the landlord withdrew from the proposed agreement. Nonetheless, I did not uphold this specific complaint.

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**"...it became clear that it was the decision of the landlords to continue to market the property and to let it to one of their existing tenants. It was also apparent that the agent had no control over this decision"**

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The Complainants also claimed that the agent had incorrectly informed them that they would be offered an adjacent property at a considerably reduced rent. From my examination of the agent's file, it appeared that the landlords were initially willing to provide an alternative property to the Complainants. While I acknowledged that the Complainants were subsequently upset to learn that the landlords were not able to reduce the rent of the alternative property to a value that met their budget, I did not consider it fair or reasonable to blame the agent for the landlords' decision and I, therefore, did not uphold this complaint.

# Case Summaries

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Finally, the Complainants claimed that the agent did not respond to e-mails within a reasonable period of time. My examination of the correspondence between the two parties indicated that, with the exception of one instance, the agent responded to the Complainants' e-mails in a timely manner. Furthermore it became evident that the Complainants had been in direct contact with the landlords at this point, who would have been able to answer any of their queries in relation to their situation. I, therefore, did not uphold the complaint.

Overall, I was not persuaded to support any of the complaints made.

## Case C – Offers

In this case, the Complainant was a prospective tenant who had made an asking price offer for the property and had paid a holding deposit. However, another prospective tenant (Mr A), who had viewed the property immediately prior to the Complainant, also made an asking price offer later the same day. Nineteen days after making the offer and paying the holding deposit the Complainant made contact with the agent's Head Office and discovered that Mr A had made an acceptable offer and that a tenancy had been agreed with him. The Complainant then asserted that the agent's member of staff had failed to communicate her offer to the landlord and that as a result of this failure she had lost the opportunity to rent the property.

In responding to the complaint, the agent admitted that their member of staff had not informed the landlord of the Complainant's offer and had subsequently provided misleading responses to the Complainant's queries. The agent also confirmed that the full holding deposit had been refunded to the Complainant and that they had made a goodwill offer of £200, as well as offering her their unreserved apologies.

Whilst there was little contemporaneous information provided by either party with which to establish exactly what had occurred, the agent did provide a transcript of an interview they had conducted with the member of staff who had dealt with the letting of the property. This document revealed that the member of staff had contacted the landlord with the intention of informing her of both offers but that, prior to disclosing that there were two offers, the landlord had challenged the agent's valuation by virtue of

the fact that the property had attracted an asking price offer within a very short space of time. The agent explained that their member of staff had become concerned by the landlord's stance and withheld the Complainant's offer as it was considered that this offer may have added further weight to the landlord's belief that the property had been undervalued. The landlord then accepted the offer from Mr A without any knowledge of the Complainant's offer. When the Complainant later made enquiries with the member of staff, she was given misleading responses which included a statement suggesting that the member of staff had been unable to make contact with the landlord.

I considered that the agent's internal enquiries had determined that their member of staff had failed to follow company procedure, had breached the TPO Code of Practice and had not been honest in her dealings with either the landlord or the Complainant. It was also clear that the agent had taken disciplinary action against their member of staff as a result of their investigations. Whilst I commended the agent for taking the appropriate action to investigate the complaint, I did not consider that their goodwill offer was appropriate in the circumstances. I, therefore, made an award of £300 which was accepted by both parties.

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**“Whilst I commended the agent for taking the appropriate action to investigate the complaint, I did not consider that their goodwill offer was appropriate in the circumstances.”**

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## Case D - Offers

A short while after viewing the property, the Complainants (the prospective tenants) held a telephone conversation with the agent in which it was conveyed to them that the agent had already spoken to the landlord and that they had been instructed not to let the property to them due to a potential safety issue in relation to their young child and the stream which formed part of the garden. Following this conversation with the agent, the Complainants acquired the landlord's contact details via the Land Registry and proceeded to contact her directly, whereupon they discovered that the agent had not consulted her before informing them that a tenancy would not



be granted to them. The Complainants then raised a number of complaints concerning the agents' conduct.

The agent stated to both my Office and to the Complainants that he had tried but had been unable to contact the landlord, prior to telephoning the Complainants. However, he commented that the landlord had previously provided him with an instruction that he was not to let the property to prospective tenants with young children due to the stream in the garden.

I examined the agent's file and found no information which indicated that such an instruction had been received. I also found no information which disputed the Complainants' account of the conversation held with the agent, in which they said that the agent had said that he had spoken to the landlord. I was, therefore, critical of the agent for not consulting with the landlord prior to his conversation with the Complainants and for advising the Complainants that he had spoken to the landlord in that same conversation, when he had not. I was not, however, persuaded that the agent had actively discriminated against the Complainants as it was clear that, following the Complainants putting an improved offer directly to the landlord (which included payment of the agent's fees), the landlord had still rejected their application. I, therefore, considered that a different outcome would not have been achieved even if the agent had contacted the landlord, prior to rejecting the Complainants' potential application.

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**“The agent stated to both my Office and to the Complainants that he had tried but had been unable to contact the landlord...”**

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As such, I was not persuaded that the Complainants had suffered any financial loss or avoidable, distress, aggravation or inconvenience to the extent that merited an award. I also pointed out that I did not make punitive awards. However, the Complainants requested that the agent provide them with a written apology to settle the matter, which the agent had confirmed to my Office that he was willing to do. I, therefore, instructed the agent to issue such a letter to the Complainants in full and final settlement of the complaint.

### Case E - Noise

The Complainants were tenants who had resided in the property for over a year and a half, during which time they had experienced an on-going issue regarding the noise coming from the establishments below the property. After vacating the property they raised a complaint with the agent in which they asserted that the agent had failed to disclose the issue of the noise, when asked, at the start of the transaction and had let a property which was 'not fit for its purpose'. The Complainants also claimed that the agent had not honoured the notice period they had given and that they had prevented the return of the deposit resulting in tenancy deposit scheme having to adjudicate on the matter. The deposit scheme then made a ruling on the deposit monies of which an element was awarded to the landlord.

The agent disputed the claims made by the Complainants, stating that they had never been specifically asked about the noise and that it was clear to the Complainants from the outset that the property was above a public house and a restaurant. The agent also said that the Complainants were given an opportunity to vacate the property early, but chose to continue to remain for a further twelve more months. The agent argued that they had not received written notice of the Complainants' intention to vacate the property in accordance with the tenancy agreement, therefore, when the Complainants handed in the keys to them a month later, this was the first time they knew that the property was vacant. As a result the agent said that they had held onto the deposit monies until the tenancy deposit scheme could adjudicate on how it was distributed.

I acknowledged that the Complainants appeared to have suffered a statutory nuisance as a result of the noise from the establishments below the property. However, it remained the case that they were given the opportunity to move out but made the decision to continue with the tenancy. They then proceeded to raise their concerns over the noise with the local Council, but did not raise the matter with the agent.

I could not determine whether the Complainants specifically asked about the noise at the outset or whether the agent had, as a result, marketed and managed a property which was not fit for purpose. However, I did point out that the Complainants had a responsibility to make sure that the property suited their

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needs and that it was clear that any property above a public house and restaurant was going to experience some noise.

With regards to the notice period, inferences could have been drawn from the actions of the Complainants and their conversations with the agent regarding vacating the property. However, the terms of the Tenancy Agreement clearly stated that one month's written notice must be provided. As the Complainants had failed to provide this the agent was left uncertain as to what the Complainants were going to do and, if they were vacating, when this was going to occur. The matter with the deposit was resolved when it was adjudicated by the tenancy deposit scheme. I, therefore, did not comment on the agent's decision to retain the deposit.

Overall, I did not support the complaint.

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**"I supported the specific complaint that the agent had failed to provide all of the relevant documentation to the Complainants' new letting agent at the appropriate time to enable them to effectively undertake the management of the tenanted property."**

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## Case F – Changing Agents

The history of this case concerned a number of employees of the agent deciding to leave the company and set up their own letting agency. The nature of the split was acrimonious with the agent accusing the ex-employees of theft of personal data and a number of other actions which, the agent said, had prompted them to take legal action against those persons.

The Complainants were landlords who had previously instructed the agent to market and manage a number of properties which they owned. However, upon making their decision to terminate their arrangement with the agent (at which point the agent was managing one property and marketing one other) and to move to the new letting agency, the Complainants considered that the agent's subsequent actions had infringed their legal rights, caused them distress, aggravation and inconvenience, and had resulted in them experiencing financial loss.

The Complainants provided copies of letters from the new letting agency concerning the behaviour of the agent's employees as well as letters from other disgruntled landlords and Trading Standards in order to support their claims. Whilst I did not consider the letters from other landlords to be relevant to the complaint concerning the agent's specific actions regarding the two properties, I did take into account the other letters when considering the specific complaints. However, it was also clear from examining both parties submissions to my Office that the agent and the new letting agent had sought to use the Complainants (often willingly) as a conduit for their own grievances. I took this into account when considering the emotive manner in which the complaints had been dealt with which was disproportionate to the nature of the issues themselves.

I supported the specific complaint that the agent had failed to provide all of the relevant documentation to the Complainants' new letting agent at the appropriate time to enable them to effectively undertake the management of the tenanted property. I also supported the complaint concerning the keys to this property, insofar as the agent's file did not contain any records of when these keys were received or checked out. In addition, I supported the complaint concerning delays in the marketing of the other property, however, I did not agree with the Complainants' assertion that this had resulted in the loss of three month's rent. Finally, I was also critical of the agent for failing to transfer the tenant's deposit to the new letting agent on the basis that the Complainants owed fees. I pointed out that the deposit monies were the tenant's monies and should not be used as a bartering tool, regardless of whether the Complainants owed the agent any fees.

Overall, I supported the complaint and made an award of £250.

# Staff List

As at 31 August 2011



Title	Name
<b>Ombudsman</b>	Christopher J Hamer
<b>PA to Ombudsman</b>	Stephanie Spencer
<b>Support Services Manager</b> <b>Receptionist/Office Administrator</b>	Sue Hurst Bob Burke
<b>Senior Finance Assistant</b> <b>Finance Assistant</b>	Louisa Dawson Anne Hall
<b>Communications Manager</b>	Peter Habert
<b>Senior Case Officer (Team 1)</b> <b>Team 1 Case Officers</b>	Colin Dixon Josephine Bailey Alan Bowers Adam West-Webbe
<b>Senior Case Officer (Team 2)</b> <b>Team 2 Case Officers</b>	Jane Reed Amy Graveson Patrick Lewis Sandra Pooke Christine Rowland-Jones Matthew Tucker
<b>Senior Case Officer (Legal)</b>	Kate Chandler
<b>Senior Case Officer</b>	Maria Evans

[Continued over page](#)

# Staff List

As at 31 August 2011

## Title

## Name

**Case Support Manager**

Amanda Stiggants

**Case Support Assistant Manager**

Joanne Beatty

**Case Support Team**

Roz Butcher

Jacqueline Gapper

Lynn Howlett

Natasha Russell

Stephen Wells

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**Initial Enquiries Manager**

Sarah Sartin

**Initial Enquiries Assistant Manager**

Debra Aitken

**Initial Enquiries Team**

Jennifer Cree

Cheryl Evans

Frances Forster

James Keating

Martin Noke

Annemarie Simpson-Wild

Susan Russell

Kimberley Saunders

Laura West

Karen Whyman

Kirstie Williams

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**Membership Manager**

Emma Harris

**Senior Membership Administrator**

Nicole Lake

**Membership Team**

Elizabeth Baker

Emma Carey

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**Membership Compliance Manager**

Janet Fitzpatrick

**Membership Compliance Senior Administrator**

Anne Ing



**The Property Ombudsman**

Milford House, 43-55 Milford Street, Salisbury, Wiltshire SP1 2BP

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