

Quarterly Report

Quarter 1 2009

The Property Ombudsman



Quarterly Report

Quarter 1 2009

Report Contents

2	About The Property Ombudsman
3	Introduction
4	General Statistics
5 - 8	Case Summaries
9	Staff List

About The Property Ombudsman

The Property Ombudsman (TPO) came into being on 1 May 2009. The Ombudsman for Estate Agents (OEA) changed its name to this to reflect the wider jurisdiction in resolving disputes covering residential sales, lettings, small commercial transactions and UK based international agents.

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 TPO offers an independent service for the resolution of disputes between member agencies and buyers, sellers, tenants or landlords 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 Estate Agents and Redress Act 2007.

The Ombudsman is entirely independent of member agencies and reports to a Council which is likewise independent of those Agents. 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) together with previous annual and quarterly reports, an explanation of governance arrangements and a full list of member agents.

Contact details:

The Property Ombudsman
Beckett House
4 Bridge Street
Salisbury
Wiltshire
SP1 2LX

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

Introduction



In my recently published Annual Report for 2008 I remarked that I was surprised that disputes relating to sales had not declined more significantly than they had. I expressed this surprise given the market conditions with house sales generally reported to be 60% down on the previous year.

The statistics in this quarterly report show a comparison between the final quarter of 2008 and the quarter ending 31 March 2009. The figures show that new sales cases referred to me have decreased by 38% against the previous quarter, so perhaps the trend in the market place has now caught up with my workload. By contrast lettings workload has increased by 3% during the current quarter over the previous quarter, again following the market trend of a more healthy lettings market.

I am able to predict reasonably precisely the numbers of cases I will receive in a year. I do this by a calculation based on historic trends in the number of enquiries within terms of reference that I receive. Once again sales related enquiries are 24% lower than they were in mid 2008, although this quarter's figures show a slight increase over the previous quarter, whilst lettings enquiries have increased by 26% over that same period. It is clear therefore where the emphasis of my workload will be for the remainder of the year.

Given that lettings feature more prominently in my decisions, I have included some examples of lettings cases that I have decided. These give a feel for how I resolve the sorts of issues that are referred to me. As I stated in my Annual Report for 2008 the most prominent reason for disputes arising related to the standards of referencing carried out by Agents, whether or not inspection visits have taken place and to a lesser extent, administration of the deposit.

I am currently undertaking visits to a number of my member firms, not necessarily my 'biggest' customers, so that I can discuss my general approach to cases, highlight changes in legislation which will impact on practice and talk about any concerns that they have in working with my scheme. These visits provide me with useful insight and I find them very constructive.

All my member Agents will by now have received notification that I became The Property Ombudsman (TPO) with effect from 1 May. The new title better reflects my broader jurisdiction, covering as it now does sales Agents, letting Agents, commercial Agents and UK based Agents selling international Property. None of my procedures or approach will change. The new TPO logos have also been sent to member Agents and it is important that these are displayed so that buyers, sellers, tenants and landlords are aware of the change and know that Agents continue to adhere to the Codes of Practice and offer access to independent dispute resolution through my office in the event that a complaint arises which the Agent and complainant are not able to resolve.

Christopher J Hamer
Ombudsman

General Statistics

Quarter 1 2009 / Quarter 4 2008

		Quarter 1 2009	Quarter 4 2008
General		361	323
Non-member	Sales	138	354
	Lettings	643	535
	Other	88	-
Outside Terms of Ref	Sales	42	172
	Lettings	36	45
	Other	65	-
Within Terms of Ref	Sales	822	753
	Lettings	810	678
Insufficient Info		152	151
Total		3157	3011

New cases - Quarter 1 2009

102

SALES

90

LETTINGS

Sales	Quarter 1 2009	Quarter 4 2008
Cases Closed	132	100
Withdrawn	2	1
Against Complainant	50	38
For Complainant	80	61

New cases - Quarter 4 2008

162

SALES

87

LETTINGS

Lettings	Quarter 1 2009	Quarter 4 2008
Cases Closed	96	74
Withdrawn	0	0
Against Complainant	30	18
For Complainant	66	56

Case Summaries

Quarter 1 2009



Mishandling of the Deposit

The Complainant was a landlord who claimed that the Agent had returned the deposit to the tenant when the Agent had been dis-instructed by him, even though the tenancy was continuing. The tenant had not then paid the deposit to the Complainant and hence there was no protection in place for the Complainant.

The Agent pointed out that their usual terms meant that they continued to manage the Property whilst the tenant introduced by them was in occupation. In this case however, the Agent agreed to hand the management of the tenancy to the Complainant even though the tenancy was continuing. This was conditional on the deposit being sent back to the tenant and they left it to the Complainant to make his own arrangements with the tenant.

In coming to a judgement on this Complaint, I noted that I had not been provided with copies of all the tenancy agreements in respect of the Property. I did note that at the end of each tenancy term the Agent wrote to the tenant providing copies of the renewal tenancy and I assumed that on each occasion a new assured shorthold tenancy was created although this was not confirmed by either party. However, the Complainant stated that in December 2007 he advised the Agent that he did not want to renew the tenancy for a six month period and hence he assumed that a periodic tenancy was then created. This was substantiated by the fact that a tenancy renewal fee was deducted and then re-credited to the statement of account in December 2007, leading to the Complainant to believe that no further tenancy documentation had been drawn up. I also note that a section 21 notice requiring possession was issued to the tenant by the Agent on 6 December 2007 and hence I had to further assume that as of that date the tenancy was continuing on a periodic basis.

I noted that the Complainant had provided an e-mail from the Tenancy Deposit Protection Scheme confirming that the deposit was registered on their database on 26 October 2007.

Upon receiving instructions from the Complainant that he no longer required the Agent to manage the Property, the Agent had responded stating:

"I have taken advice from the tenancy deposit scheme administrators and I am advised that I will not be able to forward [the tenant's deposit] direct to you. I have been informed the deposit needs to go back to the tenant and you will need to make your own arrangement directly with the tenant on how the deposit is paid / held on their behalf".

The Agent refunded the deposit, less late rent charges, to the tenant. The tenant paid no further deposit monies to the Complainant. Under the tenancy deposit arrangements the protection scheme's advice is that the deposit should not be repaid to the tenant and neither could it be transferred to the landlord; the landlord should set up his own protection account and the Agent should give instructions for the monies to be transferred into that account.

The purpose of a deposit is to provide some safeguard to the landlord in respect of the tenant's performance of his obligations under the tenancy agreement. The Agents' actions removed that protection from the Complainant. The Agent stated, that the return of the deposit to the tenant was a condition of their release of the Complainant from the management agreement and the Complainant agreed to the same. The Complainant has denied this, stating he was merely informed that this action would be taken.

Under the terms of the tenancy agreement made between the Complainant and the tenant, the Agent was holding the monies as stakeholder. The OEA Code of Practice states that in such a case the consent of both parties should be obtained, in writing, before the deposit is to be disbursed. I was concerned that there was no written consent on file for the release of the deposit. I would have expected the Agent to have obtained this before any deposit monies were paid over in this scenario. As the Agent had failed to obtain the same, I could not conclude that the Complainant agreed to the monies being released to the tenant.

I upheld the complaint as I was persuaded that the Agents' actions had removed the deposit protection from the Complainant. The Agent had an obligation to obtain the Complainant's consent, in writing, before any deposit monies were paid over. I would then have expected them to have ensured that the landlord had set up a tenancy deposit protection account, in which case they should have paid the monies into such an account. It was not sufficient for them

Case Summaries

Quarter 1 2009

merely to have advised the Complainant that, as they were no longer instructed by him, they had no obligation to retain the deposit monies. They should have ensured that such monies were paid out in the correct manner. By failing to consider these implications, I consider that the Agent had failed to comply with their obligations to the Complainant. My award was to reflect the distress, aggravation and inconvenience to the Complainant of being placed in a situation in which he no longer had the protection of a deposit and hence, if the tenant either defaulted on the rent or damaged the Property, court action would be necessary to recover all relevant costs.

I made an award of £175.

Misrepresentation of the Property

The Complainants were tenants who were renting a Property that shared a party wall with a church hall. They claimed that :

- When viewing the Property they specifically enquired about the area and how frequently the nearby church was used. The Agent informed them that the church was only used on Sundays and that the house was in a quiet area.
- On moving into the Property, the Complainants considered that the Agent had *“blatantly misrepresented the house and lied about the noise issue”*. The church hall was in almost constant use.
- They had informed the Agent of the noise issue on numerous occasions but the problem was not taken seriously and as such the Complainants consider that they were being harassed out of their home.
- They considered it unreasonable to expect any tenants to put up with the amount of noise and believed that this issue *“was obviously a known one that we should have been made aware of before we spent a lot of money moving to this Property”*.

The Agent pointed out that the Property was located next to a church (the church was the Landlord), off the main road and as such they considered this to be a quiet location comparative to

many locations. The Agent stated that at no point did the church furnish the Agent with the detail of what any outbuildings were used for or their future intentions and no comments adverse or otherwise had been made by the previous tenant.

I could only support this complaint if I considered that the Agents had been aware that there were serious noise issues at the Property but did not inform the Complainants of the same when specifically asked about such an issue, as required under Paragraph 4h of the OEA Code of Practice. Having read all the detailed correspondence provided to me by both parties, I determined I could not reach such a conclusion. I was persuaded that the Agent was entitled to describe the Property as in a *“quiet location”* as I understood this to refer to the geographical location only.

The Complainants provided me with a copy of a letter from Environmental Control addressed to the Landlord which referred to *“allegations of serious noise disturbance”*. The presence of that letter did not mean that the Agent had any prior knowledge of the issue and as such I did not consider that it substantiated this element of the complaint brought.

I also had to advise that the Agent had no responsibility to rectify the issue but to pass the concerns to the Landlord and advise the tenants of the actions that the Landlord was prepared to consider. The Agent stated that they had discussed the matter with the Landlord, but:

“the church made clear it did not wish to entertain any acoustic investment at the adjoining hall and indeed were aware of the problem because Environmental control had been in contact with them.”

I was aware that the Complainants said they had discussed this issue with the Landlords representative but he was unaware of the noise issues as the Agent had not reported anything. I noted that the Landlord had written to the Agent, expressing grave concern that at that point they had not forwarded a copy of the Complainants' letter complaining about the noise. I was therefore persuaded that the Agent had not passed such concerns on to the Landlord promptly but only sought their comments some two months after the Complainants first raised the noise issues. I supported this element of the complaint as I would have expected the Agent to have promptly notified the Landlord of the issues that were being raised.



It was nonetheless the Landlord's decision as to what action to take regarding the noise complaint and it is apparent from the comments made to the Agent that no action was being considered. I made a small award to reflect the aggravation caused to the Complainants by the failure to promptly notify the Landlord of the issue.

Management of the Property

The Complainants were tenants. They claimed that the Agent refused to carry out repairs to the Property, specifically in connection with a leak in an upstairs cupboard and to the boiler. They claimed that the failure to repair the boiler resulted in carbon monoxide leaking in to the Property. The Complainants said that the Property was generally in a poor state of repair.

The Agent who was responsible for managing the Property on behalf of the landlord advised they had been contacted about the leak by the tenant a few weeks after the tenancy commenced. The Agent was not able to arrange for a plumber to be called out to the Property straight away but advised the leak should be contained with a bucket. After a plumber's visit it was established that the water tank itself was leaking and that he needed to report back to the Agent. When the leak worsened the Complainants contacted the landlord direct who sent a plumber, who drained the tank to avoid further damage to the Property and arranged to carry out a major repair. The Complainants were then without water for ten days.

They stated that had received no apology for the Agent's use of what they described as an incompetent plumber. I took the view that I could not comment on the original plumber's skill but that the Agent had a responsibility to the landlord to ascertain the nature of the problem and seek guidance from the landlord. The inspection of the leak took place within four days but before anything more could be done the tenants had contacted the landlord themselves. The landlord took corrective action but I could not hold the Agent responsible for the fact that the complainants were without water for ten days.

As regards the boiler the complainants claimed that it took over six weeks for the Agent to respond to a request for an inspection of the boiler. Although a Gas Safety Certificate had been issued for the appliance it started to leak a few months

into the tenancy. The Agent did arrange for a plumber to inspect and repair the boiler but it was not clear to me from the Complainant's statements and from the Agent's records just how long their reaction time had been. The complainants provided no evidence to substantiate the allegation that the boiler leaked carbon monoxide and the plumber's report made no mention of such danger. I therefore did not support this complaint.

The complainants had maintained that there were a number of significant maintenance issues that the landlord had not been informed about, despite them having been advised to the Agent. The Agent's records showed that all the maintenance issues which the Complainants had mentioned to me had been advised in writing to the landlord by the Agent. I therefore again did not support the complaint.

I took the view that in this case the good record keeping by the Agent had made their substantiation of their action easy for me to follow and gave proof that the Agent had acted in an appropriate manner.

Unauthorised access to Property

The Complaint was that the tenant had contacted the letting Agent to advise that the boiler pump had broken and that it was essential that he be informed when the repair works would be carried out. The tenant returned home from work one evening to find that the boiler pump had been repaired. This had involved the workmen removing the Complainant's personal possessions from a cupboard in order to obtain access to the pump, a situation that the Complainant had wished to avoid.

The Agent was unable or chose not to provide me with any detailed information relevant to the complaint. I advised the Agent that where a Complaint had been made and the Agent concerned chose not to specifically respond to the Complaints, nor to provide any comment to this Office, nor to supply any evidence in terms of contemporaneous information to this Office, then I would conduct my Review on the assumption that the Member Agent acknowledged that the Complainant's version of events represented a factual account of what occurred and constitutes a justifiable Complaint. In this case I did just that.

Case Summaries

Quarter 1 2009

Under Paragraph 5f of the OEA Code of Practice the Agent had an obligation to provide the Complainant with notice of the intended appointment for repairs to be carried out. The progress notes provided to me by the Agent recorded that they requested the works to be carried out, and were notified 3 days later that the contractors would carry out the works that day. There was no reference to show that the Agent contacted the Complainant to advise him of this as I would have expected. As such, I upheld this complaint as I did not consider that the Agent fulfilled their obligations to the Complainant.

I made an award in regard of this complaint of £100

Management of the Property

The landlord of the Property claimed that the Agent failed to carry out works as requested by him and by the tenant when an outside security light and the boiler needed repairing. As the repairs were not carried out in a timely fashion the tenant withheld a rental payment and the landlord claimed that the Agent did not tell him of this.

The landlord claimed he was quite specific about the requirement to repair the boiler and light and the Agent had informed him that the work had been done although the landlord's subsequent requests for details of the work carried out were apparently not responded to. Indeed I was not given any copies of correspondence that indicated the requested information had been given.

The Agents records showed that some work was carried out at the Property but there was no clear indication to what this related or when it took place. The boiler was repaired at some point but because of the delays in arranging this the repairs had been completed outside the warranty period of the boiler at a cost to the landlord. He expected this to be refunded.

As regards to the alleged failure of the Agent to advise that the tenant had withheld a rental payment the Agent did not dispute that they had failed to treat this matter with the priority it should have had. This was a failure under the OEA Code of Practice.

I made an award of £150 for the shortcomings of the Agent.

Staff List

As at 31 March 2009



Title	Name
Ombudsman	Christopher Hamer
PA to Ombudsman	Natalie Hallett
Finance Manager	Sarah Davies
Finance Assistant	Anne Hall
Support Services Manager	Sue Hurst
Case Officers	Josephine Bailey Kate Chandler Colin Dixon Maria Evans Peter Habert Natalie Pughe Jane Reed Christine Rowland-Jones
Case Administration Manager	Tracey Baldwin
Senior Case Administration Officer	Amanda Stiggants
Case Administration Team	Joanne Beatty Alan Bowers Roz Butcher Stephanie Spencer
Initial Enquiries Manager	Anya Browne
Initial Enquiries Management Support	Kim Hilton
Initial Enquiries Team	Sarah Andrews Martin Noke Susan Russell Annemarie Simpson-Wild Kimberley Saunders Kirstie Williams
Membership Manager	Sarah Sartin
Senior Membership Administrator	Laura Baldwin
Membership Team	Matt Tucker Jay Johnson Nicole Lake Louise Wilson



The Property Ombudsman

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

Tel: 01722 333 306 Fax: 01722 332 296 Website: www.tpos.co.uk E-mail: admin@tpos.co.uk