



The Property Ombudsman

Interim Report 2015



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The Property Ombudsman Scheme

Who are we?

The Property Ombudsman (TPO) scheme has been providing consumers and property agents with an alternative dispute resolution service for 25 years. The scheme was originally established in 1990 and was renamed TPO in 2009 to reflect its now broader jurisdictions relating to sales (including buying agents), lettings, search providers, residential leasehold management, chattels auctions, international and commercial property agents, as well as property buying companies.

The Scheme

In June 2008 TPO was the first redress scheme to gain the status of an Approved Estate Agents Redress Scheme under the provisions of the Consumers, Estate Agents and Redress Act 2007. In April 2014, the Department for Communities and Local Government also approved TPO as a redress scheme for letting and management agents operating in England. In July 2015, the Chartered Trading Standard Institute and the National Trading Standards Estate Agency Team awarded TPO the title of 'approved ADR scheme' under the ADR Regulations, following a thorough audit of its governance arrangements and complaint handling processes.

Codes of Practice

TPO is the primary source for industry standards, with both the TPO Codes of Practice for Residential Estate Agents and Residential Letting Agents receiving approval from the Trading Standards Institute's Consumer Codes Approval Scheme (CCAS), following a rigorous application and monitoring process. TPO also provides Codes of Practice for buying agents, property buying companies and commercial property agents. Furthermore, understanding the significant differences between the Scottish and English systems, TPO also provides CCAS approved codes for Scottish sales and lettings agents.

What does TPO do?

TPO provides consumers with a free, impartial and independent alternative dispute resolution service of complaints against property agents (TPO scheme members). The Ombudsman provides redress, where appropriate, to consumers whose complaints are considered on a case by case basis and may make awards of up to £25,000 for actual and quantifiable loss and/or for aggravation, distress and/or inconvenience caused by the actions of a registered agent. The Ombudsman is not a regulator and does not have the authority to take regulatory or legal action against an agent, impose fines or dictate the way in which firms conduct their business.

Independence

The TPO Board charges scheme members an annual subscription however, it is the independent Council to whom the Ombudsman reports to, the majority of which is made up of non-industry members. It is the Council who appoints the Ombudsman and sets his Terms of Reference i.e. how the complaint process operates.

Ombudsman Association

TPO is a full member of the Ombudsman Association and adheres to the organisation's principles of good governance for ombudsman schemes.

Contact

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Salisbury, Wiltshire SP1 2BP

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01722 333 306

Membership Enquiries Tel:
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Fax: 01722 332296
Email: admin@tpos.co.uk

 [@TPOmb](https://twitter.com/TPOmb)

 facebook.com/PropertyOmbudsman



**Christopher J Hamer
Ombudsman**

Christopher Hamer took up his current post as The Property Ombudsman in December 2006. Prior to this he was the Private Secretary to the Parliamentary Commissioner, Director of Services at the Insurance Ombudsman Bureau and the General Manager at the Personal Investment Authority Ombudsman Bureau. Immediately before taking up his position as The Property Ombudsman he was in a global compliance role with a major international bank.

Ombudsman's Report

As I draw towards the end of my term in office as Property Ombudsman, I will be looking back over that time with a particular focus on the past two years or so when the property sector has seen much new legislation emerging. This has presented a number of obligations for agents operating in the Private Rented Sector but in a disparate way, through the Consumer Rights Act, the Deregulation Act, Immigration Act which now go alongside existing obligations under the Consumer Protection from Unfair Trading Regulations and various local authority licensing and housing standards regimes.

It is well recognised that the availability of decent property to rent, the need to ensure transparency of information for consumers and lessening financial risk for landlords and tenants are all very important, and it seems to me that this scattering of legislation does not assist in achieving the aims of openness, disclosure and consistency for agents, tenants and landlords alike.

What is needed is a Property Agents Act. This would update the Estate Agents Act 1979 to reflect developments in the sale market (such as the growth of purely on-line agents, the role of portals and 'passive' intermediaries) and most relevantly now to bring lettings into a precise framework where all agent activity is covered by one piece of legislation. Such things as licensing of agents, standardised tenancy agreements and compulsory client money protection could all be areas included in this new Act.

This would not mean the introduction of a financial services regulatory regime, but would result in an overarching consistent approach and set of standards, perhaps more compliance powers for trade bodies, strengthening of the approach of trading standards services. However, if the situation is allowed to drift then there will always be those firms (albeit in a minority) that will seek to take advantage of loopholes to the disadvantage of not only those consumers unlucky enough to deal with them, but of the industry as a whole.

A handwritten signature in black ink, appearing to read 'C Hamer', with a horizontal line underneath.

**Christopher J Hamer
Property Ombudsman**

Interim Statistics

Membership

Offices registered for:	30 June 2014	30 June 2015
Sales	12,655 ¹	14,452 ²
Lettings	11,575	13,419
Commercial Sales	2,069	2,483
Commercial Lettings	2,152	2,639
Residential Leasehold Management	180	291
International	773	667
Buying (Acquisition) Agents	433	619
Property Buying Companies	37	99
Auctions	254	275
Total	30,128	34,944



¹ Includes 204 online only agents

² Includes 253 online only agents

Membership contact details:

Tel: 01722 335 458

Fax: 01722 332 296

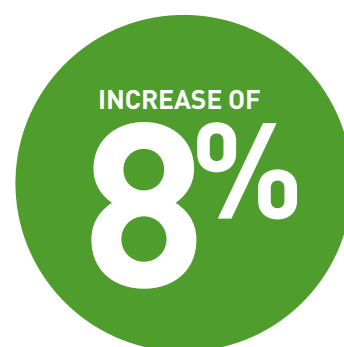
Email: membership@tpos.co.uk

- For membership select option 1
- For accounts select option 2
- For membership compliance and surveys select option 3

Enquiries

1 January to 30 June 2014 vs 2015

Enquiries ¹ - 1 January to 30 June	2014	2015
Lettings	4,759	5,303
Sales	2,828	2,780
Residential Leasehold Management	352	460
Commercial	108	139
Property Searches	11	9
Auctions (Chattels)	3	4
International	3	24
Buying Agents	5	0
Buying Companies	0	1
Complaint Enquiries Total	8,069	8,720
Agent/General Enquiries	405	421
Overall Enquiry Total	8,474	9,141

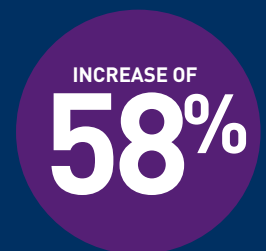
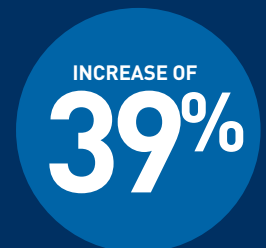
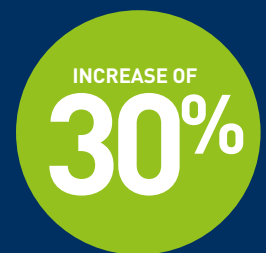


¹ Number of individual complaint enquiries received

Caseload

1 January to 30 June 2014 vs 2015

Cases Received, Considered, Reviewed and Resolved - 1 January to 30 June		
	2014	2015
Lettings		
- Accepted Complaints	796	991
Resolved via		
- Mediated Resolution	234	353
- Formal Review	487	581
Lettings Resolutions	721	934
Sales		
- Accepted Complaints	544	604
Resolved via		
- Mediated Resolution	123	195
- Formal Review	307	401
Sales Resolutions	430	596
Other Jurisdictions		
- Accepted Complaints	35	61
Resolved via		
- Mediated Resolution	16	26
- Formal Review	20	31
Other Resolutions	36	57
Total Accepted Complaints	1,375	1,656
Total Resolutions	1,187	1,587



Lettings

Case Studies

An Unexpected Request

Complaint

The Complainants (the potential tenant and guarantor) complained that the Agent retained the holding deposit/administration fee of £565 even though the Agent terminated the application process. The Agent argued that the Complainants had withdrawn from the process as they had been unwilling to provide requested information.

Investigation

I noted that shortly after the Complainants had commenced the application process for the 'rent to buy' tenancy, the Agent's representative had attended their current property and requested to take photographs of the bedrooms and bathroom. Unsurprisingly, this unexpected request was refused by the Complainants, a decision which they claimed had resulted in the Agent refusing to progress their application. The Agent did not contest the Complainants' claim and provided little in the way of an explanation for the basis of their representative's request, other than commenting that

photographic evidence of how the Complainants lived was required as part of the application process. Both parties contended that the other withdrew from the process and I was not provided with any documentary evidence to support either claim.

Outcome

I considered it was the Agent's failure to explain their procedure, which ultimately, ended the application irrespective of whether the Complainants withdrew or the Agent refused to continue the application. Furthermore, I considered the Complainants were within their rights to refuse to allow photographs to be taken as they had not been informed that it was part of the Agent's application process and I could see no reason why the Agent could not have continued to process the application as the photographs did not form any part of the contract between the Complainants and the Landlord regarding the Tenancy. I directed the Agent to reimburse the Complainants with the full set up fee of £565.

Learning

Where application processes are likely to require information that could be considered 'non-standard', this should be highlighted to potential applicants before they make a transactional decision to proceed with a transaction. This is especially relevant if the information required is of a personal nature.

An Unexpected Eviction

Complaint

In this case, the Complainant (one of the two tenants) returned from holiday to find the locks to the property had been changed and that he had been removed from the tenancy agreement. After raising these issues with the Agent, he was informed that they had carried out these actions on the instructions of the other tenant, his wife, who he had shared his holiday with.

Investigation

It appeared from the documentation that the Complainant had gone on a trip with his wife and whilst away his wife had instructed the agent to change the property's locks. Upon returning he was unable to access the property or his possessions, yet was still chased for rent arrears via email. The Agent provided a tenancy agreement which indicated that the Complainant had been removed from the tenancy, which his wife had allegedly used in court thereafter. However, it subsequently transpired that the Complainant was still a party to the tenancy agreement so he could not be removed without his consent. The Agent's response to the complaint was firstly to deny all involvement. When pressed by the Complainant further, they then claimed they had everything required to legally

remove him from the tenancy. Their final response was to state that the Complainant's obligations under the tenancy agreement remained the same and that he was therefore liable to pay rent. I also noted that, for some unknown reason, the Agent had issued their final viewpoint to both the Complainant and his estranged wife.

Outcome

Although I recognised that this was an unusual situation, and explained that I was in no position to determine what actually occurred between the Complainant and his wife, I did not consider the Agent to have handled the situation appropriately. They had taken unilateral action upon an unverified report and instructions from one Tenant, had failed to give appropriate advice regarding the tenancy agreement, and had given misleading and contradictory information to all involved throughout the process. Whilst I did not support the complaint in terms of the claim for financial loss (the Complainant asserted that he had lost all of his personal belongings), I did consider that the Agent had acted outside of their remit and in doing so had significantly exacerbated the situation. I made an award of £1,000.

Learning

If there are multiple tenants bound by one tenancy agreement, it is often useful for a lead tenant to be nominated with the appropriate written authority provided to them by the other tenants to represent them. Where such authority has not been provided and one tenant acts as the conduit for providing the instructions of another tenant, those instructions should always be confirmed with the correct tenant before any action is taken.



Online Only

Complaint

This complaint concerned the Agent's entitlement to retain the £500 holding deposit paid by the Complainants (the potential tenants). The Complainants paid the holding deposit to the Agent but then, three working days later, decided not to proceed with the proposed tenancy stating that they were advised that they were unable to complete the referencing applications any other way than via online. The Complainants requested a refund from the Agent of the deposit paid. The Agent argued that the Complainants had signed a form which stated that the holding deposit was non-refundable if they withdrew and, therefore, were not entitled to a refund of the deposit.

Investigation

I acknowledged that the Complainants had been advised in writing that the holding deposit would be non-refundable. However, I advised the parties that I took into account what was fair and reasonable and the guidance of the Competition and Markets Authority (CMA). In this case, the relevant aspects of that guidance were that a 'no refund' term where a potential tenant is required to make a substantial prepayment before a tenancy

agreement is signed is likely to be unfair. However, the guidance describes as fair the landlord or agent holding back from any refund of prepayments a reasonable sum to cover net costs or net loss. In this respect, the Agent failed to provide any evidence of costs incurred. I noted that there were no costs for referencing and that the property had remained on the market during the three day period. Furthermore, it appeared that the Agent had made no efforts to provide the Complainants with an alternative method to complete the application process.

Outcome

In the absence of any evidence to the contrary, I was not persuaded that the Agent had incurred any administrative costs in respect of the Complainants and the proposed tenancy. I advised the Agent that the holding deposit could not be used as a revenue stream and should reflect payment for services provided and any net loss to the landlord client. As such, I did not consider that the Agent was entitled to retain any of the holding deposit for themselves. I, therefore, supported this complaint and directed the Agent to refund the sum of £500 to the Complainants.

Learning

The CMA guidance for lettings professionals clearly sets out that a holding deposit should not take the form of a penalty or a fine for potential tenants in the circumstances where the tenancy does not proceed to fruition. Where a holding deposit is requested this should reflect the costs to the Agent of the pre-tenancy process and, if appropriate, the landlord's potential loss of rent for the period a property has been removed from the market.



I advised the Agent that the holding deposit could not be used as a revenue stream and should reflect payment for services provided and any net loss to the landlord client.



Renewal Fees

Complaint

The Complainant (the landlord) considered that the renewal fees claimed by the Agent were unfair under the Unfair Terms in Consumer Contracts Regulations (UTCCR) 1999 and contrary to the ruling in the OFT v Foxtons case. The Agent contended that the fees were contractually due and that their terms and conditions were compliant with the Regulations.

Investigation

In the first instance, I advised the Complainant that it was not my role to consider whether a particular contract clause was unfair for the purposes of UTCCR as that was a matter only a court could determine. I also commented that the Foxtons case did not prohibit agents from claiming renewal fees but rather required any clauses pertaining to such fees to be clearly explained. With this in mind, I examined the Agent's terms and conditions of business and considered that they clearly set out the basis on which they would claim a renewal fee in respect

of the tenancy. As such, I was satisfied that the Agent had met their obligations in this respect. However, I also took into account what was fair and reasonable. In doing so, I considered the Competition and Markets Authority (CMA) guidance (also referred to by the Complainant) although I was mindful that this guidance was not produced until June 2014. I also took into account discussions between the OFT and Foxtons following the outcome of the court case. Accordingly, I did not consider it fair or reasonable for the Agent to claim a renewal fee indefinitely and not beyond the three renewal fees already paid by the Complainant, especially given that the Agent had provided a tenant find only service.

Outcome

I supported the complaint and directed that the Agent cease pursuing payment for the most recent renewal in January 2015 (in the sum of £1,647.36) and cease claiming any further renewal fees in respect of the Tenancy.

Learning

Charging an indefinite renewal fee is no longer an acceptable practice. Agents should be aware that their terms and conditions must reflect the important aspects of the CMA guidance as well as the requirements of the TPO Code of Practice.



I examined the Agent's terms and conditions of business and considered that they clearly set out the basis on which they would claim a renewal fee in respect of the tenancy.



Early Release

Complaint

In this case, the Complainant (the tenant) requested an early termination of the tenancy as a result of alleged issues with a neighbour. It was agreed that the Agent would remarket the property and that the Complainant could be released from the tenancy when a new tenant was found. However, the Complainant raised issues concerning the viewings that took place during this time, adding that there was a lack of response by the Agent to the concerns raised and that she had suffered bullying, harassment and intimidation from a neighbour.

Investigation

I found that there was one occasion where the Agent accessed the property before receiving confirmation from the Complainant that it was acceptable for them to do so. I criticised the Agent in this respect. However, I considered that the Agent was seeking to act in the Complainant's best interests by finding a new tenant as a matter of urgency and I took into account that the Complainant had advised the Agent in an email that

they could access the property with a key if she was unable to be present. I also found that the Agent had responded to the Complainant's concerns in a timely manner. I acknowledged that the timescales involved may not have met the Complainant's expectations but I did not consider that the Agent could be criticised for this. Finally, in respect of the issue concerning the neighbour, whilst I sympathised with the Complainant for the situation she had found herself in, I explained that the Agent could not be held accountable for the actions of the neighbour and that that was a matter to take up with the appropriate authorities.

Outcome

I supported one aspect of the complaint in respect of the Agent's unannounced access to the property. However, given that the Agent was seeking to act in the Complainant's best interests I did not consider the circumstances merited an award of financial compensation.

Learning

Unless there is an emergency, all access to a property occupied by a tenant must be conducted in accordance with the terms of the tenancy agreement. It is in all agents' interests to ensure that sufficient notice is given to the tenant, the request and response (if any) is recorded on the branch file and the keys movements are noted on the key log.



Sales

Case Studies

Fixed vs Percentage

Complaint

In this case the Complainants (the sellers) raised concerns about the Agent they instructed to market the property for sale and specifically requested that the commission fee was reduced to reflect those concerns (communication of offers and complaint handling), adding that there was an informal agreement between the parties to replace the fixed fee with a percentage based fee. The Agent asserted that their commission fee, as stated in the agency agreement, was contractually due.

Investigation

I noted that, following a series of low offers during the initial five months that the property was marketed, the Complainants decided to let the property. Instead of withdrawing the property from the market, the Agent placed it on 'low key' marketing for the duration of the tenancy. This saved the Complainants having to pay a fee when they subsequently instructed the Agent to re-market the property, eight months later. Having agreed to reduce the asking price in line with the Agent's recommendation, the Complainants received an offer for the property. At this point, the Complainants asked the Agent to consider reducing the commission fee. The Agent declined this request and although that offer was withdrawn, the Complainants subsequently agreed a sale on the property to the Buyers. Having paid the fixed commission fee due, the Complainants sought to be reimbursed with the difference between that and the fee they felt they should have paid, had the Agent charged them a percentage fee of the eventual sale

price. I considered that the Complainants had agreed to clear and unambiguous fixed commission fee terms within the Agreement and I found no evidence to support their claim that the Agent agreed to reduce the fixed commission fee to reflect the eventual selling price. Whilst the Complainants complained that the Agent had not provided a new agreement following their instructions to re-market the property after they had let it, I found no reason for the Agent to have done so. However, I criticised the Agent's failure to demonstrate clear communication prior to this in terms of the advantage to the Complainants of continuing to market the property on a 'low key' basis instead of withdrawing the property from the market. Regarding offers, I found the Agent's communication to have been unsatisfactory on two occasions, underlined by the disclosure of an offer the Complainants were unaware of in their response to the complaint - although, given the nature of the offer, I was not persuaded that the Complainants would have made an alternative decision had they been aware.

Outcome

I supported the complaint to the extent that that the Agent had failed to communicate all of the offers received, failed to communicate clearly about the terms and conditions in relation to the ongoing 'low key' marketing and subsequently failed to escalate the Complainants' concerns in line with the requirements of the TPO Code of Practice. I made an award of £200. However, in doing so I clarified my view that the Agent was entitled to retain the commission fee in full.

Learning

Where a property does not receive the offers a seller anticipates and they decide to let the property whilst continuing to market it for sale, it is advisable to reiterate the terms of the agency agreement at that point. This will provide the seller with the opportunity to consider their position and protects the agent's claim to a commission fee where marketing continues.

A Lack of Gas

Complaint

The Complainant (the buyer) asserted that the Agent had incorrectly stated in the sales particulars that there was gas central heating at the property in circumstances where the gas supply had not yet been connected.

Investigation

Having considered the branch file provided by the Agent, I found that the property details form completed by the Agent (and which was signed by the Seller confirming his agreement to the information contained therein) recorded that there was central heating at the property but did not select an option of gas, electric or oil as to how that was supplied to the property. Thereafter, it was apparent that direct negotiations had taken place between the parties' legal representatives with regard to the work required to connect the gas supply. I noted that the Agent was not a party to those negotiations. Indeed, the Seller confirmed that he was responsible for the cost of the work and, accordingly, the Complainant was not financially disadvantaged. Further, I agreed

that it was the Seller's responsibility to ensure that the work was completed. Whilst I did not dispute the Complainant's frustration at the time taken for the gas supply to be connected to the property, this was not something that the Agent could be held accountable for. I advised the Complainant that if he wished to pursue this issue further, he must do so directly with the Seller.

Outcome

Whilst I was critical of the Agent for their omission in not establishing the source of central heating, I did not consider that the Complainant would have acted differently in respect of the transaction had he known of the issue with the gas supply at an earlier stage. The Complainant was free to withdraw from the transaction, without penalty, at any stage up to exchange of contracts but chose to proceed. However, I did consider that Agent's omission caused a degree of aggravation to the Complainant (as a result of having less time to negotiate arrangements with the Seller) and that an award of financial compensation (£100) was merited to reflect this.

Learning

When conducting a market appraisal, the type of energy used to power installations must be considered and questioned with the seller. This requirement goes alongside an obligation to check that the property is not subject to an energy related loan (such as those that were available under the Green Deal) which are attached to the property and therefore will be liable for repayment by the future buyer.



When conducting a market appraisal, the type of energy used to power installations must be considered and questioned with the seller.



Private Sale vs Commission Fee

Complaint

In this case the Complainant (the seller) was unhappy that the Agent claimed a commission fee following a private sale and raised a number of concerns about the service provided by the Agent during a previous sale to a potential buyer introduced by the Agent. The Complainant said that the Agent had wrongly advised him of completion dates, as well as informing him he could not use his preferred solicitors, as the potential buyer was using them.

Investigation

I found no evidence to suggest that the Agent had incorrectly advised the Complainant of completion dates and their file demonstrated that they had passed on information obtained from the relevant parties in the transaction. I did not attribute the aggravation caused here to the Agent. In respect of the solicitors, I was satisfied that the Agent had correctly advised the Complainant and the potential Buyer that both

parties wished to use the same legal firm. On receipt of the memorandum of sale, the Complainant would have been aware that the potential Buyer had sourced an alternative solicitor and he could, therefore, have instructed his preferred legal representative but he did not. In respect of the commission fee claimed by the Agent, I found the Complainant to have dis-instructed the Agent's services, via email prior to exchange of contracts. The Agent had no involvement in the sale, nor had they introduced the purchaser. On receipt of the notice, the Agent did not take steps to terminate the agency agreement, as I would have expected them to do.

Outcome

I was critical of the Agent's actions in not following the Seller's instructions to terminate the agency agreement. Accordingly, I concluded that the Agent was not entitled to payment of the commission fee and directed them to reimburse the Complainants who had paid on a 'without prejudice' basis.

Learning

Put simply, if a seller follows the necessary procedure to terminate an agency agreement, that agreement has ended and the agent's marketing of a property should cease. Whilst it may be the case that a seller chooses to seek a private sale, it is not acceptable to insist on payment of a commission fee in circumstances where the agent has not introduced the buyer. If an agent wishes to recoup marketing costs, these costs should be prominently displayed in the agency agreement and actively flagged to the consumer prior to signing.



Marketing Fees

Complaint

The Complainants (potential sellers) claimed that they instructed the Agent based on inaccurate verbal representations made to them concerning marketing. The Complainants also claimed that the Agent did not address their formal complaint in a timely manner and sought a refund of the fee they paid for marketing and administration along with a request to be released from the Agency Agreement. The Agent contended that their fees had been charged correctly.

Investigation

In the first instance, I advised the parties that it was not my role to determine contractual issues; that was a matter to be considered by a court. I also advised that I was unable to base a decision on verbal conversations having not been a party to the same. As such, I commented that I was unable to establish what may have been discussed between the parties and what representations may have been made at the point the Complainants signed the agency agreement. It was, therefore, necessary for me to consider the complaints raised in light of the documentary evidence. Having done so, I noted that the agency agreement provided for a fee for marketing/administration. However, I

commented that I would have expected the Agent to have clearly detailed the services that they were to provide in return for that fee, which they did not. Finally, I was presented with no information which indicated that the Complainants had made a request to terminate the agency agreement.

Outcome

I criticised the Agent for not clearly setting out the services relating to the marketing/administration fee and pointed out that this had led to a lack of clarity as to what work was to be undertaken and, thereafter, the dispute arising. That said, I noted that the Agent had offered (as a gesture of goodwill) to revise the marketing material produced so that it was in line with the Complainants' expectations. In these circumstances, I considered that the Agent had acted appropriately and attempted to resolve the dispute. I, therefore, did not support this complaint. In respect of complaints handling, I considered the correspondence between the parties and was satisfied that the Agent had dealt with the complaint in a timely manner. I also advised the Complainants that it was not my role to terminate the agency agreement as that was an action only they or the Agent could undertake.

Learning

This complaint could have been easily avoided had the services which were being charged for been clearly defined within the agency agreement. Whilst no award was made, the Agent had spent considerable time dealing with a complaint that could have been averted.



I criticised the Agent for not clearly setting out the services relating to the marketing/administration fee and pointed out that this had led to a lack of clarity as to what work was to be undertaken and, thereafter, the dispute arising.



Undisclosed Holiday Lets

Complaint

The crux of this complaint concerned the Agent's failure to advise the Complainants (the buyers), either by way of the sales particulars or at the time that the Complainants viewed the property, that there were pre-arranged holiday lets agreed for the property in the near future. The Complainants explained that this impacted on the eventual completion date that could be agreed between the parties.

Investigation

I found that the Agent was aware at the time of instruction that holiday lets had been agreed but that they did not relay this information to the Complainants as they claimed that there had been no clarification on that point from the Sellers. However, I noted that the Agent did advise the Complainants of the situation 12 days after they made an offer for the property and that the Complainants chose to proceed with the transaction, seeking to negotiate with the Sellers on the matter. Accordingly, I was not persuaded that the Complainants would have acted differently had they been aware of the holiday lets at the time of viewing the property.

I also advised the Complainants that the Agent could not be held accountable for the Sellers' actions or their unwillingness to agree to the Complainants' proposals during their negotiations.

Outcome

I considered that the Agent should have sought clarification or at least advised the Complainants of the situation at the outset and that, by not doing so, a potential misleading omission under the Consumer Protection from Unfair Trading Regulations had occurred. The Agent's failure to divulge this information and seek clarification prevented the Complainants from making a conditional offer (to take into account a proposed completion date) or from commencing negotiations with the Sellers at an earlier stage. I was therefore satisfied that the Complainants would have been caused avoidable aggravation, distress and inconvenience as a result. I supported this complaint and, taking into account that I did not consider that the Complainants would have taken a different transactional decision, made an award of £100.

Learning

While it is accepted that there are many situations where information that buyer needs to know falls outside of an agents control, where there is an unclear situation, the agent should take steps to clarify the position. At the least, the situation, as it stands, should be communicated to the prospective buyer to allow them to make an informed decision on the information to hand.



Extended Negotiations

Complaint

The Complainants (the potential buyers) claimed that the Agent failed to disclose that the Seller had issued a Section 42 Notice to the Freeholder, prior to the Complainants submitting an offer. The Complainants also claimed that the Agent harassed and pressured them to exchange contracts. The Complainants considered that the Agent should be responsible for the direct financial loss suffered as a result of the transaction not proceeding.

Investigation

I found that, at the time the Complainants made initial enquiries concerning the property, the Agent had made them aware that the Seller was in discussions with the Freeholder concerning a lease extension. It was also evident that the Agent was not provided with the Section 42 Notice until after the Complainants had submitted an offer and I noted that the Agent forwarded this to the Complainants upon receipt. As such, I was satisfied that the Agent acted in accordance with their obligations under the TPO Code of Practice to provide information in a timely manner. I also noted that the

Complainants' legal representative made them aware of the Section 42 Notice and provided advice at an early stage in the transaction and that they chose to proceed. Ultimately, it was the Seller's timescales that resulted in the sale not proceeding and not simply the existence of the Section 42 Notice. In respect of the Complainants' claim of harassment, I observed that the Agent had communicated in a professional manner and reported the Seller's instructions to the Complainants as required to do. I considered that the pressure and harassment the Complainants felt would have been attributable to the Seller's wishes and instructions and not as a result of the Agent's own actions.

Outcome

Overall, I considered that the Agent had acted correctly and that the situation had arisen due to the actions of the Seller. Accordingly, I advised the Complainants that I did not consider that the Agent could be held responsible for the direct financial loss they suffered and did not support the complaint.

Learning

Whilst the extent of the Seller's discussion with the Freeholder regarding the length of the lease was not made entirely clear to the Agent, they correctly informed the Complainants that those discussions were occurring. The Complainants were therefore aware of the position when deciding whether to make an offer and proceed with the purchase of the property.



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Estate Agency Team
Protecting Consumers
Safeguarding Businesses



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