

The Property Ombudsman (TPO) (Residential Sales Code of Practice)

AUDIT DATE: MAY 2019

Background information

The Ombudsman for Estate Agents (OEA) scheme was established 1st January 1998. The Property Ombudsman (TPO) operates multiple codes of practice covering residential sales, residential lettings, residential leasehold management, auction and chattels, buying agents, property buying and property buying companies.

The name "The Property Ombudsman" came into being on 1st May 2009 the name change was made to reflect the broader jurisdiction in relation to complaints TPO deal with.

The Property Ombudsman has approval as an estate agency redress scheme under the Consumers, Estate Agents and Redress Act 2007. Membership of TPO includes around 95% of sales agents and approximately 70% of lettings agents UK wide. At May 2018 there were 18,910 residential sales branches of which 11,135 were sales and lettings, 3059 were sales only, 2414 lettings only and and 1232 were sales, lettings and other jurisdictions, all members of TPO Ltd.

The Enterprise and Regulatory Reform Act 2013 requires all residential lettings agents to belong to an approved redress scheme. TPO has achieved approval of its scheme along with Ombudsman Services Property and The Property Redress scheme.

TPO is authorised by CTSI (Chartered Trading Standards Institute) as an ADR (Alternative Dispute Resolution) provider.

The majority of Sales members also provide lettings facilities. (see audit for Lettings Code of Practice)

Both Codes have been reviewed amended and updated and are awaiting approval by CTSI.

Audit Process

A qualified Chartered Trading Standards Practitioner from the Chartered Trading Standards Institute (CTSI) completed an audit.

The audit focused on the following areas:

Advice to members including general compliance and staff training.

Marketing and advertising by member businesses- Terms and conditions and contracts including cancellation rights, deposits delivery times, guarantees and warranties.

Customer service provisions.

Consumer complaints process including ADR

Customer satisfaction and how this information is used to develop and improve the code.

Sanctions against members for non-compliance with the code.

Audit Summary

Member Application Process/New members

A small number of new applicant's documentation was examined. The process focuses on ensuring that prospective members understand their obligations and that they have all the necessary indemnities and insurances in place. There is also a photographic ID check.

There were 1802 new members to the scheme between 01/05/18 and 30/04/19.

TPO provides online training modules for members through Virtual College on the Consumer Protection from Unfair Trading regulations 2008 and complaint handling toolkits at a nominal charge. It was previously reported that consideration is to be given to marketing the courses to members, this would be supported.

The current 'Welcome Pack' includes copies of Consumer guides and Codes of practice. These are also on the website. TPO have added a 'new member checklist' sheet to the 'Welcome Pack' which gives guidance on procedure and documents needed for the smooth completion of the Compliance Survey.

Existing Member Inspections/Audit

180-200 members are selected randomly on a 9 monthly basis (excepting Easter, Summer and Christmas Holidays) providing a yearly total of approximately 1620, the only criteria is that they must have been in the scheme for at least 6 months. The selection is by a random number generator and manually adding in any agents that have been brought to the attention of the Compliance Department in relation to a suspected non compliance issue.

TPO has worked with Devon, Somerset and Torbay Trading Standards Services targeting sales and lettings agents in their areas. 459 audits were requested.

Agents are sent a detailed questionnaire which must be completed within 28 days and returned with all supporting documentation including photographs of shop fronts and displays of required certificates. Reminders are sent by email/letter 7 days ahead of the expiry of the 28 days and a final reminder at 28 days after that. A spreadsheet is maintained of received audits to enable reports to be run and to highlight non compliance issues and to provide statistics for the Board of Directors.

A detailed review of the questionnaire and documentation is carried out, non conformities are graded and colour coded and the agent is required to make corrective actions and provide evidence that corrective actions have been carried out within 28 days.

If an agent fails to respond or remain non-compliant TPO will inform local trading standards if it is a matter that potentially breaches regulations.

Membership Withdrawal and Sanctions for Non Compliant Member Businesses

There are various sanctions for non compliance ranging from warnings to expulsion. There is an automated email sent to members who fail to renew their subscription detailing what must be done in relation removal of logos etc and how to reinstate membership. It is expected that the disciplinary process may include, if relevant a requirement to undergo the on line training modules.

Members who had cancelled their membership, ceased trading or not paid their renewal fees are removed from the TPO website, and their records amended accordingly. The renewal process included a series of standard e-mails or letters that included reference to enforcement action by Trading Standards.

A number of termination letters sent to members were examined. The terminations were for non payment, resignations and failure to pay an award following a complaint.

1892 full members ceased membership between 01/05/18 and 30/04/19

Marketing and Advertising by Member Businesses

TPO issues comprehensive branding guidelines to all their members, and all new members receive a pack of marketing and branding materials when they join the code.

Members websites are checked as part of the monitoring process, marketing and advertising is checked as part of the random compliance audit process with shop front photographs showing the correct use of logos.

Terms and Conditions and other Pre-Contractual Information

These are examined as part the monitoring process but not as part new members applications and the monitoring process.

The previous audit observed that: 'Consideration should be given if appropriate and practical to examine terms and conditions and pre contractual documentation as part of the new member application process'

TPO has responded 'Agency contracts are not standardised as the majority of the sector is made up of small independent agents who draft their own contracts. Legally qualified members of staff, experienced in contract law, would be needed to provide this service. Whilst we appreciate the benefit to consumers, this would present a significant cost increase to TPO.' This rationale is accepted as reasonable.

Customer Service Provisions

TPO operates a comprehensive customer service system with emphasis on resolving complaints by assisting complainants on an 'informal' basis. There are clear systems and procedures. As TPO runs the Ombudsman scheme there is organisational focus on customer care. It was reported that consumers are at the heart of the organisation.

TPO can provide leaflets in multiple languages and formats and provides assistance to consumers that need help with completing forms or understanding the complaints process.

There are no premium rate numbers and TPO will take complaints in writing electronically and by telephone.

Consumer Complaints Process

There was a four stage process now streamlined into a more efficient two stage process .

1. Initial enquiry and advice and evaluation to see if there has been a potential breach of the code
2. Passed to the early resolution team for settlement and escalated where necessary to Case Management for adjudication.

As an Ombudsman and ADR provider there is a relatively high number of enquiries reported in the 2018 Annual report, 29,023 enquiries of which 4,246 were moved to the complaint process, of which 1,304 were sales complaints, 2,450 were for lettings and 349 for Residential Leasehold Management and 143 for other jurisdictions. the average award given for successful sales complaints was £608. Top causes of complaint were communication and record keeping, marketing and advertising, instructions, terms of business commission and termination and in-house complaints handling.

The complaints process is free and comprehensive with trained experienced staff as complaint handlers. The number of complaint handlers is under constant review to ensure there is sufficient resource to deal with the volume. There is a career progression scheme for adjudicators based on experience and competency, with the most experienced able to make the highest awards

The process is clearly explained on the TPO website and appears to operate very efficiently.

Customer Satisfaction and Feedback

Members are encouraged to get their customers to leave feedback via various routes including My local Services and also via the TPO website. Responses are reviewed as part of the process of regular code review. A large consumer review was carried out in 2018 with 30,000 Consumer guides were given to agents to hand out to customers, the results are in the Annual Report.

TPO also undertakes consumer and agent satisfaction surveys at different stages of the complaint process. The results are fed into Senior Management to consider potential operational changes and are presented to the Board every quarter.

Conclusions

This is a long established and well-run code.

The TPO continues to fulfil its obligations as a code sponsor and its members are compliant with the CCAS core criteria and the Property Ombudsman (Residential Sales Code of Practice).

The code is under constant review and ongoing improvements initiated to make full compliance with the code as easy as possible for members. The amended codes are expected to be approved shortly and will further strengthen consumer protections.