

What will the Ombudsman do?

Once it is established that you have completed your in-house complaint procedure and issued a final viewpoint letter, or eight weeks have elapsed since the consumer first complained to you in writing, the Ombudsman's initial processes can begin. Prior to this point, whilst we may make contact with you, the Ombudsman's review processes have not yet begun and no decision will be made by the Ombudsman.

Early Resolution

It may be possible to achieve an early resolution of the dispute through conciliation, helping you and the complainant to reach a mutually agreeable settlement. Cases will be assessed for conciliation during the following stages:

- when we are first informed by the complainant that there is a dispute
- when we receive a completed complaints form
- once we have received your file

Formal Review

The majority of disputes will be considered by an Adjudicator undertaking a formal case review and presenting a recommendation to the Ombudsman. Where the complaint is supported, an appropriate award of financial compensation may also be considered, which is binding on you if the complainant accepts the Ombudsman's decision.

Mediation

In cases where the complaint falls outside the Ombudsman's Terms of Reference the Ombudsman may suggest an appropriate third party mediation service.

How should you present your side of the case?

We will send you a copy of the complaints form completed by the complainant and request your file.

A covering submission letter should also be provided if:

- Your final viewpoint letter will not convey a clear understanding of your position
- You have something further to add
- A final viewpoint letter has not been issued

If you decide to provide a submission letter this should be sent to TPO and the complainant.

Should you choose not to provide a submission letter the Ombudsman will move forward with considering your complaint and may take your final viewpoint letter (if issued) as your final stance on the matter.

Which documents should be included in your company file and sent to TPO?

The content of your file is the key. What you send us should be the complete file of the transaction. We will expect to see the following documents (if applicable):

For sales transactions:

- market appraisal form
- agency agreement
- viewing records
- sales particulars
- offers made
- copies of all correspondence between you and the complainant and other relevant parties during the transaction
- any contemporaneous written records of the monitoring of the sale and the contact you had with the complainant and other relevant parties, sometimes called "sales progress notes"
- memorandum of sale
- invoice

For lettings transactions:

- tenancy agreement
- terms of business
- check-in/check-out reports
- inventory
- evidence of references
- copies of all correspondence between you and the complainant and other relevant parties during the transaction
- any contemporaneous written records concerning the monitoring of the letting of the property

Please note that if you are unable to provide evidence in support of your actions, it is more likely that the Ombudsman will accept the complainant's version of events.

What happens next?

Once the complaint file is complete, we will write to you and the complainant confirming that the case has been scheduled for formal review. The Adjudicator will consider the submissions provided by both parties (and also make other enquiries where appropriate), reach a reasoned decision and present a written case review to the Ombudsman for a proposed decision. That proposed decision may be:

- to support the complaint
- not to support the complaint
- to propose a settlement through conciliation or mediation

What if you have made a goodwill offer to the complainant?

Any offer lapses on referral of the complaint to this office. The Ombudsman will decide whether or not that offer represents appropriate compensation for the complaint.

How will the Ombudsman decide the complaint?

The Ombudsman will consider the evidence provided and will be guided by best practice. Whilst the Ombudsman takes into account legal principles, a legalistic approach is not undertaken. The Ombudsman is not bound by the rules of evidence which apply in a Court and cannot take evidence under oath or cross-examine people.

For those agents who subscribe to TPO's Codes of Practice, the Ombudsman will be guided specifically by the relevant Code in judging the complaint. The Ombudsman will always use common sense and arrive at a decision based on what seems to them to be fair and reasonable in all the circumstances.

What happens when a proposed decision is made?

The case review/formal review with the proposed decision will be sent to both parties at the same time. Each party will have 14 days to accept the proposed decision or represent against the proposed decision.

What if you do NOT agree with the Ombudsman's proposed decision?

You can make a representation within 14 days. However, the Ombudsman will only re-consider their proposed decision if:

- you can show that there is a significant error in fact that has a material effect on the decision
- or you can produce significant new evidence that has a material effect on the decision

If the evidence provided is likely to result in a change to the proposed decision it will be necessary to allow the other party the opportunity to comment on the representation within 14 days and such comments will be taken into account before issuing a Final Decision to both parties at the same time.

Please note that the TPO process is designed so that complaints start and finish with the Ombudsman. Having made a Final Decision, there is no avenue for appeal or further review of the complaint, for either party.

What can the Ombudsman do?

First, the Ombudsman can criticise you for any failings or breaches of the Code of Practice if it applies to your agency and direct that you change your practice.

Secondly, the Ombudsman can make an award to the complainant (of up to £25,000 – other jurisdiction awards will be advised accordingly) for:

- actual, proven financial loss
- any avoidable aggravation, distress and inconvenience

Thirdly, the Ombudsman can direct that you take, or desist from taking, such steps as specified including the issuing of a formal apology to the complainant.

Awards

The range of awards made over the last two years is:

£1-£499	69.4%
£500-£2999	24.3%
Over £3000	6.3%

What is the likely outcome?

If the complainant accepts an award, they do so in full and final settlement of all the complaints against you upon which the Ombudsman has made a formal judgement. The decision is binding upon you and you will be required to pay any financial award or carry out any directions that the Ombudsman may make within a reasonable time, usually 28 days. You are also required to inform this office when you have made payment or put into effect the Ombudsman's directions.

If the complainant does not accept the Ombudsman's decision, they are free to pursue their complaint elsewhere, without prejudice to anything decided by the Ombudsman. In this situation, you will also be free to pursue any claim you may have for any outstanding fees.

Oral Hearings

Any request for an oral hearing will be considered by the Ombudsman (or their appointed deputy) by reference to the nature of the issues to be determined and in particular the extent to which the complaint raises issues of credibility or contested facts that cannot be fairly determined by reference to documentary evidence and written submissions. In deciding whether there should be a hearing and, if so, whether it should be in public or private, the Ombudsman will have regard to the provisions of the European Convention on Human Rights. The Ombudsman will give reasons in writing, if a hearing is not granted.

Further information

Our case reviews and the Ombudsman's decisions remain strictly confidential between you, the complainant and the TPO office. Details of complaints may, in accordance with the requirements of the Consumer's, Estate Agents and Redress Act 2007 and the Enterprise and Regulatory Reform Act 2013, be provided to other consumer redress schemes or any person/organisation exercising a regulatory function, e.g. trading standards officers. No personal details or details of specific aspects of the case will be given to anyone else outside of TPO without your consent.

We do, however, publish abridged and anonymised case summaries on our website and in the Ombudsman's interim and annual reports.

We work hard to make sure we give everyone who contacts us an efficient and helpful service. So we take complaints about our service very seriously.

If you're not satisfied with the way we have handled your complaint, at any point in the process, please let us know. This does not include if you're unhappy with the Property Ombudsman's final decision.

Making a complaint about us

1. If you're not satisfied with our service, firstly tell the person dealing with your case. Usually, they will be able to resolve it for you straight away. If you are not comfortable dealing with the individual concerned you can put your concerns to their Line Manager.
2. If the person dealing with your case and/or their Line Manager has not been able to resolve your complaint you can ask for it to be considered by a Senior Manager. You will need to do so within one month of the date of the closure of the case. Your complaint will usually be considered by either the Deputy Ombudsman or the Director of Operations and they will respond to you within one month of receiving your complaint.
3. If you remain unhappy after receiving a response from the Senior Manager you may refer your complaint to the Independent Reviewer. You will need to do so within one month of the date of receiving the response from the Senior Manager.
4. The Independent Reviewer is appointed by the Board of The Property Ombudsman (TPO) to consider complaints about TPO at the final stage of the service complaint process. Please note that the Independent Reviewer's remit is to consider complaints about our service and not the reasoning of the Ombudsman's decision. The Independent Reviewer's full terms of reference can be found at www.tpos.co.uk/about-us/independent-reviewer. You will receive a response to your complaint within one month of the Independent Reviewer receiving it.

You can write to the Independent Reviewer at:

Claire Evans
Independent Reviewer
PO Box 2957
Romford
RM7 1QX