

Terms of Reference for The Property Ombudsman Scheme

INTRODUCTION

1. The Property Ombudsman is an impartial and independent Ombudsman service, that resolves disputes between consumers and Members in connection with the services for which that Member falls within the Ombudsman's jurisdiction, as agreed from time to time. The detail of those Member's services, including the relevant geographical boundary, that fall within the Ombudsman's remit, can be found on the TPO website.
2. The TPO scheme is set up as a limited company, The Property Ombudsman Limited. The Board, which consists of a majority of lay directors, exercises strategic oversight of the organization and is responsible for appointing the Ombudsman.
3. The Ombudsman is not a member of the Board. The Board has no locus in relation to the Ombudsman's professional decisions with regard to the Scheme. This ensures the Ombudsman's independence and impartiality. Their relationship with the Board, and the role of the Board, is explained further in Part 5.
4. These Terms of Reference outline the nature, powers and extent of the Ombudsman scheme to which members agree to be bound. They also guide the Ombudsman in dealing with disputes and coming to independent Decisions. They allow the Ombudsman to use their discretion within the general guidelines given.

PART 1 – INTERPRETATION

5. In these Terms of Reference, the following expressions have the following meanings:

- a. 'Award' means the element of a direction in money, or money's worth, of a Final Decision as defined under 8 c & 8 d.
 - b. 'Board Member' means a member of the Board of Directors of the Company appointed in accordance with the Company's Articles of Association.
 - c. The 'Company' means The Property Ombudsman Limited.
 - d. 'Complainant' means a natural person, small business, charity or trust who is entitled to seek the assistance of the Ombudsman to resolve their dispute. The list of entitled persons is detailed on TPO website.
 - e. 'Day' means a calendar day, not a working day.
 - f. 'Decision' is a direction and/or decision and/or conciliation, mediation or other informal resolution process made by the Ombudsman within their powers under these Terms of Reference.
- g. 'Estate Agency Work' means any things done by any person during a business (including a business in which they are employed) pursuant to instructions received from an individual (the 'client') who wishes to sell or purchase any property
 - for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to purchase or, as the case may be, sell such property; and after such an introduction has been effected in the course of that business, for the purpose of securing the sale or, as the case may be, the purchase of that property;
 - provided that nothing shall constitute estate agency work unless it relates exclusively to the sale or purchase of property.
 - h. 'Final Decision' has the meaning set out in paragraph 34 below.
 - i. 'Internal Complaints Procedure' means an appropriately documented procedure for the resolution of complaints in relation to acts or omissions of the relevant Member.
 - j. 'Letting' means the finding of a tenant for a third-party landlord and/or the management of a property on behalf of that landlord.
 - k. 'Member' means any commercial enterprise which is directly a Member or Registered Agent of TPO or who is subject to the Ombudsman's jurisdiction and these Terms of Reference either by virtue of a contractual agreement with a trade association of which the firm is a Member and has agreed to abide by their rules or otherwise.
 - l. 'Relevant work' means the work of which a Member has notified TPO in the membership deed.
 - m. 'Residential Leasehold Management' means the management of residential leasehold blocks of flats, in accordance with the terms of the lease and statutory requirements and under the instruction of the freeholder or legal entity with the control of the property.
 - n. 'Small business' (to include Charities and Trusts) is defined as:
 - a small business (or group of companies) with an annual turnover of less than £3 million;
 - a charity with an annual income of less than £3 million;
 - a Trust with a net asset value of less than £3 million.
 - o. 'UK' means England, Wales, Scotland and Northern Ireland.

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6. In these Terms of Reference:
- references to the provision of services include, where the context admits, references to their non-provision;
 - references to the singular number including without limitation references to 'individual', 'Complainant' includes, where the context admits, the plural and vice versa.

PART 2 - PRINCIPAL DUTIES AND POWERS

Duties

7. The Ombudsman's principal duties are:
- to receive unresolved disputes in relation to the carrying out of relevant work by any Member; and to resolve them by appropriate means, including investigating such disputes, and issuing a Decision, within the powers of the Ombudsman in accordance with these Terms of Reference;
 - to actively assist in and contribute to raising standards, including by highlighting and promoting best practice, by identifying bad practice and through provision of intelligence and data to policy makers, regulators, industry and other relevant stakeholders to support systemic improvement.

Powers

8. The Ombudsman's principal powers are to direct that a Member:
- takes steps to improve practice and/or to desist from a continuance of an existing practice;
 - takes, at their own expense, any specified action in relation to the specific dispute;
 - pays the Complainant a financial award by way of compensation for financial loss;
 - pays the Complainant a financial award in respect of aggravation, distress and/or inconvenience;
 - limits their fees to a specified amount and/or refund fees already paid;
 - issues a formal apology to the Complainant.

In respect of 8c and 8d, the total value of the award shall not exceed the amount specified in the membership deed. Where the amount claimed by the Complainant exceeds the monetary limit defined in the membership deed, the Ombudsman will advise the Complainant of that limit and provide the option of either discontinuing the investigation or proceeding and accepting the award limit.

In addition, the Ombudsman may share appropriate information, data and intelligence to support the systemic improvement of organisations or the wider sector, subject to the constraints as outlined in paragraph 21.

PART 3 – DEALING WITH DISPUTES

SCOPE OF INVESTIGATIONS

Grounds of dispute

9. The dispute must arise from an act and/or omission that had been the subject matter of a complaint made to a Member that could constitute:

- a breach of their obligations under the law;
 - a breach of their obligations under any relevant Code of Practice or any internal rules, procedures or statements of practice of the Member;
 - general membership obligations;
 - unfair treatment;
 - maladministration or service failure;
- in a way that that would result in the Complainant suffering detriment or impact, such as financial loss and/or aggravation, distress and/or inconvenience and/or other detriment caused by the act(s) or omission(s) which was/were the subject matter of the complaint.

General conditions for acceptance of a dispute

10. The Ombudsman shall only consider, or continue to consider, a dispute if they are satisfied that:
- the complaint is made against a Member as defined under these Terms of Reference;
 - the dispute is brought to them by or on behalf of a complainant. However, where the effective resolution of a dispute necessarily involves consideration of another Member's acts/omissions, the Ombudsman may initiate such consideration in the interests of achieving a fair outcome without requiring a complaint to be considered by that member's internal process. However, in so doing, the Ombudsman will give that other member notification, and thus opportunity, to put the matter right;
 - the Internal Complaints Procedure of the Member has been exhausted, but the Complainant remains dissatisfied with any observations made, or conditions of full and final settlement offered by such Member; or more than eight weeks have elapsed since the Complainant first made the complaint to the named Member in writing. If the Member ignores the complaint made or persistently fails to address the complaint, the Complainant may ask the Ombudsman to intervene even if eight weeks have not elapsed;
 - no complaint has been made to the Member, but the Member has referred the dispute to the Ombudsman for resolution as their relationship with the Complainant has irrevocably broken down;
 - the dispute is brought to the Ombudsman not later than twelve months after the date of the Member's final viewpoint letter;
 - the act or omission giving rise to the dispute first occurred or could reasonably have come to the notice of the Complainant not more than twelve months before the Complainant first made their complaint in writing to the Member;
 - the act or omission of a Member giving rise to the complaint first occurred after the date on which such firm became subject to the Ombudsman's jurisdiction;
 - the subject matter of the dispute was not previously considered by the Ombudsman. However, the Ombudsman may, in exceptional circumstances, re-open a dispute previously considered if relevant new evidence is available, and no Award has been accepted and paid in full and final settlement;

- i. the Ombudsman may, in the instances set out in Paragraph 11 below, not investigate a dispute or may discontinue an investigation. Notwithstanding those instances, they may still consider any dispute put to them provided that:
 - i. there is no other appropriate independent body for the conciliation, arbitration or adjudication of disputes in relation to the matter; and
 - ii. the Ombudsman considers that it is in their competence to do so; and
 - iii. both the Complainant and the Member or Registered Agent so agree.

In such cases, the Ombudsman may accept a dispute even if;

- The internal complaints procedure has not been exhausted
- Eight weeks has not elapsed since the Complainant made a complaint.

General exclusions

- 11. The Ombudsman shall not investigate a dispute (or any part of a dispute), or shall discontinue the investigation of a dispute (or any part), if:
 - a. it appears the Complainant is seeking a legal decision or sanction that can only be obtained in the Courts and/or an adjudication of potentially criminal activity or claims of negligence;
 - b. at any time that the Ombudsman finds out the specifics of the dispute (or part of the dispute) is being, is to be (within a 3-month timescale), or has been considered by a Court, or under another independent complaints, conciliation or arbitration procedure, they will discontinue their investigation into those matters. If that other body is not considering all aspects of the dispute or if that body is not designed to offer the outcomes as outlined in paragraph 8 above, to the Complainant, the Ombudsman may then resume consideration of the dispute. The Ombudsman may, at their discretion, determine that it is not proportionate to consider, or resume consideration of, the remaining matters.
- 12. The Ombudsman may not investigate a dispute (or any part of a dispute), or may discontinue the investigation of a dispute (or any part), if:
 - a. the dispute does not have reasonable chance of success, or the Complainant has not suffered (and is unlikely to suffer) detriment that would result in an Ombudsman's direction;
 - b. the Member or Registered Agent has already offered fair and reasonable outcome in relation to the issues under dispute and the offer remains open for acceptance;
 - c. the Complainant fails to positively and appropriately engage with the Ombudsman, including:
 - i. failing to provide information requested;
 - ii. failing to comply with deadlines set;
 - iii. is abusive;
 - iv. has fabricated evidence;

- v. has unreasonable expectations of TPO's services, such as claims for directions to be made that would be beyond the powers of the TPO or claims for excessive financial awards;
- vi. the Ombudsman considers the matter to be frivolous or vexatious; or
- d. there are other compelling reasons why it is inappropriate for the issue to be dealt with by The Property Ombudsman.

GENERAL PROCEDURE

- 13. The Ombudsman shall first decide whether or not a dispute falls within their Terms of Reference. In determining this, they shall take into account the guidelines in Paragraphs 9-12 above and consider any Representations from the Complainant and the Member.
- 14. The Ombudsman may give advice to a complainant on the procedure for raising a dispute with them and/or on the procedure for raising a dispute with any other relevant independent scheme for the conciliation, arbitration or adjudication of complaints or disputes where such other scheme appears to them to be more appropriate for the investigation of any complaint or dispute or part thereof. They shall not advise individuals on the selection of an agent or on the services that they offer, but they can advise the Complainant as to which Members are subject to the Ombudsman's jurisdiction and their registration status.

Consideration of a Dispute

- 15. The Ombudsman must then determine whether they will consider the matter further in accordance with the guidance outlined in paragraphs 9-12 above. If at any point they decide not to take forward the matter, they must advise the parties, within three weeks that they are intending to decline to take the matter forward.
- 16. Subject to the other provisions of these Terms of Reference, the Ombudsman shall, at their own discretion, decide the procedure and timescales to be adopted in resolving disputes, provided that no lawful rights are removed from the Complainant or Member. Such considerations may include conciliation, mediation or a case review. This discretion includes the delegation of making decisions on disputes as set out by the Ombudsman in their Scheme of Delegation.
- 17. In their consideration, the Ombudsman shall act impartially and fairly in all circumstances and must give reasons for their Decisions, usually in writing.

Confidentiality

- 18. Following the receipt of any dispute, the Ombudsman shall promptly:
 - a. require the Complainant to give written consent to give up their right to any duty of confidence owed to the Complainant by the Member in terms which permit the disclosure by the Member to the Ombudsman of information and documents requested by the Ombudsman;
 - b. send such written notice of consent to the Member.
- 19. The Ombudsman may use any information freely provided to them by a complainant or a Member in their consideration of a complaint provided it is for the express purpose of resolving that dispute.

- 20.** The Ombudsman may refuse to disclose information to either the Complainant or the Member if:
- in their reasonable opinion, it is not relevant to the resolution of the dispute;
 - in their reasonable opinion and in all the circumstances of the matter, it is inappropriate, or unlawful;
 - it concerns issues of national security or the personal security of the Complainant, or Member or third party;
 - it is protected by legal or professional privilege (and such privilege has not been waived);
- provided that the Ombudsman shall always consider any specific requests for disclosure received from either party.

- 21.** The Ombudsman will act in accordance with Data Protection legislation and shall take all reasonable steps to ensure that they and all TPO Office staff keep confidential any information provided as part of the investigation of a complaint, whether or not it is disclosed to the other party.

Requests for Information

- 22.** For the purpose of the consideration of a dispute, the Ombudsman may require the Complainant or Member to provide to them:
- such information and/or documents which are within their knowledge or reasonably ascertainable by them;
 - and such information and/or documents in their possession or under their possession or control as are relevant to the dispute.
- 23.** The Ombudsman will be entitled to proceed with their consideration of the dispute and to draw their own conclusions if, in their opinion, such requested information is not provided at all or within a reasonable timescale previously notified to the relevant party.
- 24.** Neither party shall be required to disclose documents to the Ombudsman which they are satisfied are protected by legal or professional privilege (where such privilege has not been waived by the Complainant or the Member as appropriate). However, in the absence of relevant information, the Ombudsman is still entitled to form a view on the information they possess.
- 25.** The Ombudsman may also request information from third parties if they believe it may be relevant to the investigation.
- 26.** The Ombudsman shall not be bound by any legal rule of evidence. They are not permitted to take evidence on oath or cross-examine witnesses. The Ombudsman shall reach their Decision based on what appears to them to be fair and reasonable in all the circumstances, and by reference to the evidence and information gathered during the consideration of the complaint.

Guidelines

- 27.** In making any Decisions under these Terms of Reference and in determining what is fair and reasonable, the Ombudsman shall have regard to:
- the law;
 - any relevant Code of Practice and any internal rules or procedures or rules, procedures or statements of practice issued by a trade association of the named Member;

- the provisions of any contract binding the Member and the Complainant;
- any other matter the Ombudsman considers relevant to the act or omission by the Member and which is the subject matter of the dispute.

Changes to General Procedure

- 28.** The Ombudsman shall operate in accordance with these Terms of Reference and shall consult and obtain the approval of the Board in respect of any proposed changes to the Terms of Reference.

DECISIONS AND SETTLEMENTS

Proposed Decision

- 29.** Having come to a proposed decision on the dispute the Ombudsman will send a case review containing the proposed decision to both parties. Each party will have 14 days in which to accept the decision or provide representations against the proposed decision, following which either:
- the proposed decision will be confirmed as the Final Decision in full and final settlement of the complaint; or
 - if a representation has been received which 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 considered before issuing a Final Decision to both parties at the same time.

Representations

- 30.** A Representation can be received from either party, and must normally be submitted in writing within fourteen days of the issue of the proposed decision. Either party is entitled to present exceptional circumstances regarding adherence to this timescale, which may be amended as a result, at the Ombudsman's discretion.
- 31.** A Representation will normally only be considered:
- if it can be shown that there has been a significant error in fact that would have had a material effect on the Decision;
 - if significant new evidence (not previously available) is produced that will have a material effect on the Decision.
- 32.** The Ombudsman can decline to consider a Representation if they consider it falls outside of the grounds defined at paragraph 31 above or is, after due consideration, a reiteration of the original dispute. Should the Ombudsman not accept representations, the relevant party shall be notified of that decision with reasons

Oral Hearings

- 33.** Unless exceptional circumstances apply, disputes will be resolved without recourse to an oral hearing. Any request for an oral hearing must be considered by the Ombudsman by reference to the nature of the issues to be determined, and the extent to which the dispute 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 mechanism for determining or resolving a dispute is a decision for the Ombudsman and at their discretion.

Final Decision

34. Having considered any Representations, the Ombudsman shall come to a Final Decision. Should the complainant accept the Final Decision, it shall be in full and final settlement of the dispute.

35. A Final Decision shall be in writing and shall:

- a. give a summary of the reasoning for making the Decision;
- b. specify the direction(s), in accordance with paragraph 8, if any, that the Ombudsman has made;
- c. not be subject to further Representation;
- d. not be subject to appeal.

There may be occurrences where there have been shortcomings on the part of the Member, but it has not led to any disadvantage, financial loss or other impact to the customer and therefore no directions will be given, but the shortcomings will be drawn to the members attention.

Members will be expected to address those shortcomings, to prevent any detriment befalling another consumer and should another dispute arising from the shortcomings occur, the Ombudsman may consider any failure to address such matters in their Final Decision.

36. The Ombudsman may at their discretion employ a conciliation, mediation or other informal resolution process to determine matters. Any settlement agreed by both parties at the end of that process will have the status of a Final Decision and any financial amount will have the status of an Award in such decision. The Member is therefore then under an obligation to conform to any direction and/or award that the Ombudsman may make about implementing that settlement in accordance with Paragraph 8 and within the timescales set out in the Final Decision.

37. Although final decisions are not subject to Appeal or further Representation this does not preclude the Complainant or Member making a complaint about the Ombudsman's service, processes and procedures, which will then be dealt with in accordance with the TPO service complaints handling procedure. Such complaint in and of itself cannot and will not result in a change to the final decision.

Awards

38. The Awards made by the Ombudsman are compensatory and not punitive. They are;

- a. to compensate a Complainant for financial losses; and/or
- b. to compensate the Complainant for undue and avoidable aggravation, distress and/or inconvenience; and/or
- c. to remedy any detriment occasioned by the act or omission of the Member.

39. Any Award or value of the Award made under paragraph 8(c) & (d) shall not exceed the amount specified in the membership deed or service level agreement. The return of fees improperly charged is not covered by the restriction.

40. The Decision shall state clearly the timescales for acceptance. If the Complainant agrees to accept it in writing in full and final settlement of the subject matter of the dispute, it shall be binding on both the Complainant and the named Member.

41. If the Complainant fails to accept the Decision within the timescale and no exceptional circumstances have been notified within that period to which the Ombudsman has agreed an extension, the Decision and any award therein shall lapse.

The Ombudsman will notify the Member as well as the Complainant of any such exceptional extension where one has been granted and, in all cases, will notify the member whether the decision is considered to have been accepted and therefore binding on the Member, within a reasonable timeframe at the conclusion of the timescale.

42. The Member shall comply with the Ombudsman's directions:

- a. within 28 days of the issue of the final decision; or
- b. if the Award states that any monies are due to be paid by the Complainant to the Member, within 14 days of the Complainant making such payment.

The member will provide evidence of such compliance to the Ombudsman within 30 days of the issue of the Ombudsman's decision.

Full and Final Settlement

43. Any Award or Directions made and accepted are in full and final settlement of the whole dispute made against the Member upon which the Ombudsman has made a Final Decision.

44. The Ombudsman must inform the Complainant that acceptance of an Award and/or a Decision might compromise their ability to pursue that matter through the Courts. By acceptance of the Ombudsman's Award and/or Directions, the Complainant agrees to the full and final settlement of that dispute. However, if they reject the Ombudsman's Final Decision, a Complainant can pursue their case through the Courts, as with any complaint on which the Ombudsman has been unable or has declined to make a Final Decision.

Closure and Discontinuance

45. On any settlement, withdrawal or lapse of a dispute, the Ombudsman shall discontinue the consideration of that dispute.

46. Once the Ombudsman has made a Final Decision and an Award has been accepted and paid in full and final settlement, the case is closed. The Ombudsman may not direct that a case be re-opened unless failure to do so would lead to exceptional detriment to either party or as directed by a Court.

47. The Ombudsman shall not be bound or in any way limited by any previous Decision made by them or by any predecessor.

PART 4 – IMPROVEMENTS IN STANDARDS

48. The Ombudsman can put proposals for the improvement of practice within the industry into the public domain, as well as providing relevant insight to any interested party, including, but not limited to regulators, enforcement bodies and government departments.

49. The Ombudsman will consider, for any member who has a dispute raised under these terms of reference, whether their membership is in compliance with their membership terms, including meeting their obligations under these terms of reference. Should the dispute indicate that there is an issue, the member will be referred to the compliance process, as outlined in the membership documentation.

- 50.** During the consideration of any complaint, the Ombudsman has a duty to consider whether the complaint is one which raises issues that could trigger referral to the NTSELAT in accordance with TPO's approval as a redress provider.
- 51.** Following the consideration of any complaint, the Ombudsman may issue advice to Members regarding their general compliance with Codes of Practice and/or provide recommendations to improve their practice/s. Such advice is not binding upon the parties.

PART 5 - OTHER POWERS AND DUTIES

Promotion of the Scheme

- 52.** The Ombudsman has an obligation to publicise the scheme and to explain to the media, general public, and all interested parties the scheme's purpose and procedures.

Role of the Board

- 53.** The Ombudsman shall endeavour to attend each meeting of the Board and put before it such business that they deem fitting and give it any information and assistance (including any general information about any reference) which it reasonably requests. Nothing in this clause excludes the Board from meeting in the absence of the Ombudsman.
- 54.** Except in pursuance of Paragraph 48 and 50, or as required by any competent authority or appropriately mandated body, or as properly and reasonably required in connection with any legal proceedings instituted by or against the Company or any of its officers, the Ombudsman shall not disclose to any person (including a Board Member) any information concerning a complaint considered by them from which it would or might be possible to identify the Complainant or any Member named in the complaint, or any other information of a confidential nature which has been obtained in the course of their duties.

- 55.** Paragraph 54 shall not prohibit the disclosure of any information to the Complainant and any Member or to the Chair of the Board or any Member of the Board authorised by the Board; or to any employee, consultant, independent contractor or agent of or with the Company to the extent that such information is reasonably required by that person for the purpose of performing their duties to the Company.
- 56.** The TPO Board has specific responsibilities under the Companies Act and the Articles of Association. It has no role in the discharge of the Ombudsman's duties or decisions. The Board is therefore responsible for the functioning of the Company, raising sufficient funds and the administration of and promotion of TPO membership. Termination of membership is not an Ombudsman function and is covered under the membership documentation. It can, however, derive from issues identified by the work undertaken through the Ombudsman's functions.

Annual Review

- 57.** The Ombudsman will produce a report, at least annually, providing a review of the Scheme's activities during the preceding year.
- 58.** In accordance with the Ombudsman Scheme's various independent external approvals, the Ombudsman will also produce, and where appropriate publish, specific information required under the criteria for the approvals.