

THE PROPERTY OMBUDSMAN

WRITTEN SUBMISSION

1. TPO Overview

History and Purpose

- 1.1 The Property Ombudsman (TPO) has been providing alternative dispute resolution to the property industry for 24 years.
- 1.2 Originally established in 1990 as the Ombudsman for Corporate Estate Agents, in 1997 the scheme was renamed as the Ombudsman for Estate Agents, later changing to TPO to reflect its broader jurisdiction covering disputes relating to sales, lettings, personal search organisations, residential leasehold management, international sales (through UK based agents), chattels auctions and commercial property.
- 1.3 In June 2008 TPO was the first redress scheme to gain the status of an Office of Fair Trading (OFT) Approved Estate Agents Redress Scheme under the provisions of the Consumers, Estate Agents and Redress Act 2007. TPO is currently in the process of applying for approval as an approved letting and managing agent redress scheme under the provisions of the Enterprise and Regulatory Reform Act 2013 (ERR), prior to mandatory redress requirements being introduced for all letting and management agents in England.
- 1.4 TPO provides consumers with a free, impartial and independent alternative dispute resolution service for complaints against TPO scheme members (property agents operating throughout the UK). The Ombudsman's resolutions are designed to achieve a full and final settlement of the dispute and all claims made by either party. The Ombudsman can, where appropriate, make compensatory awards in individual cases up to a maximum of £25,000 for actual and quantifiable loss and/or for aggravation, distress and/or inconvenience caused by the actions of a registered firm.

1.5 The Property Ombudsman Limited is a 'not for profit' company limited by guarantee. There is no cost to the consumer or the taxpayer for TPO's services.

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Scottish Letting Agents and TPO Membership

1.7 The Scottish Government estimate that there are around 719 letting agent businesses (branches) in operation which account for about 50% (150,000) of annual lettings.

- Overall, the number of Scottish property agents registered with TPO is 457
- The number of Scottish agents providing a lettings service and registered with TPO is 216
- The number of letting branches in Scotland registered with TPO is 309

UK Membership, Standards and TPO's Codes of Practice

1.8 TPO's Code of Practice for Residential Estate Agents has received full approval from Trading Standards Consumer Codes Approval Scheme (CCAS) and is followed by 12,181 estate agent branches who are members of TPO. We believe this equates to approximately 95% of the estate agents trading in the UK.

1.9 Despite no current legal requirement for letting agents to be registered with a redress scheme, the TPO Code of Practice for Residential Letting Agents is voluntarily followed by 10,989 letting agent branches who are members of TPO. Based on the same figures used by the Scottish Government in point 184 of the Housing (Scotland) Bill – Financial Memorandum (contained in the Explanatory Notes), we consider this equates to approximately 90% of letting agents trading in the UK.

1.10 TPO's new Code of Practice for Residential Lettings Agents is in the process of being finalised prior to achieving CCAS approval. Significant changes to the current Code include updated requirements of the Equalities Act 2010; more explicit requirements in relation to the Consumer Protection from Unfair Trading Regulations 2008; the upcoming changes to the consumer cancellation rights contained in the Consumer Contracts (Information, Cancellation and Additional

Charges) Regulations 2013; clarification in relation to the charging of premiums to Scottish tenants; the requirement to provide tenant information packs to potential tenants in Scotland and updated deposit registration requirements for Scotland and Northern Ireland.

1.11 TPO's Codes of Practice are widely respected and used throughout the property sector by other industry bodies. For example the National Association of Estate Agents (NAEA) and the Association of Residential Letting Agents (ARLA) use TPO's Codes as the basis for their own judgements regarding their members conduct. In addition, TPO's Codes have been replicated by other trade bodies to use as their own membership codes, for example the UK Association of Letting Agents (UKALA).

1.12 Customer satisfaction and compliance surveys carried out as part of CCAS monitoring requirements have shown a consistent increase in consumer (buyer and seller) satisfaction with member firms and the firms' compliance with the TPO Code of Practice for Residential Estate Agents. Similar positive results have been received for CCAS monitoring carried out on TPO letting agents who voluntarily follow the Code of Practice for Residential Letting Agents.

1.13 The cost of TPO membership is £170 (plus VAT) per office which covers the agent for letting, sales, buying, commercial, international and auction related services.

Governance, Independence and Principles

1.14 The Ombudsman provides redress, where appropriate, to consumers whose complaints are supported after consideration on a case by case basis. Redress is intended to put the consumer back into the position they were before the complaint arose. The Ombudsman is not a regulator and does not have the authority to take regulatory or legal action against a registered firm. The Ombudsman does not have the power to impose fines or dictate the way in which firms conduct their business.

1.15 The scheme charges its members an annual subscription collected by the Board of TPO Ltd. However, it is the TPO Council, chaired by Lord Richard Bes, who appoints the Ombudsman and sets his Terms of Reference, (i.e. how the complaint process operates). The Ombudsman is accountable to the Council and reports directly to them. The Council's majority is made up of non-industry members in accordance with the company's Articles of Association.

1.16 Agents who do not comply with the Ombudsman's decisions or who have been referred to TPO for other compliance related matters can be referred to the Disciplinary and Standards Committee (DSC) who can impose sanctions on the agent or, if necessary, expel the agent from membership. The DSC is accountable to the Council and is made up of non-industry members with representation from the Board. Serious non-compliance matters which are potentially illegal are referred to the relevant authority (e.g. Trading Standards).

1.17 Unresolved complaints concerning TPO's service can be referred to the Council who, if appropriate, will ask the Independent Reviewer to conduct an internal investigation.

1.18 TPO's Annual Report includes reports from both the DSC and the Independent Reviewer. The DSC also issue press releases, where appropriate, to inform consumers about agents expelled from the scheme.

1.19 TPO is a full 'ombudsman member' of the Ombudsman Association (previously named the British and Irish Ombudsman Association - BIOA) and the Ombudsman sits on its Executive Committee. TPO operates in accordance with the organisation's principles of good governance:

- Independence
- Openness and transparency
- Accountability
- Integrity
- Clarity of purpose

- Effectiveness
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2. TPO's work in 2012

2.1 At the time of writing TPO's Annual Report for 2013 is being compiled. Whilst statistics have yet to be finalised, it is apparent that complaints related to lettings activities have once again increased by around 20%, with the most prevalent issues being communication, complaint handling and repair and maintenance.

2.2 Unlike the single source data collected by consumer organisations, the Ombudsman's investigations consider submissions from both side of the dispute to enable him to determine what is fair and reasonable in the specific circumstances of the of the case, taking into account the requirements of the TPO Code of Practice and relevant legislation.

2.3 During 2012, TPO received complaint enquiries from 15,782 consumers. Relevant to lettings, 8,334 tenants and landlords raised complaint enquiries which covered 14,017 different issues.

2.4 Relevant to Scotland, TPO received 333 complaint enquiries from landlords and tenants covering 561 issues. Most enquiries related to more than one issue, a common occurrence in letting disputes. From these enquiries, 35 cases required a formal review. The remainder were either resolved informally by TPO staff or the consumer was signposted to the appropriate organisation.

2.5 The average award made against a letting agent in 2012 was £325 and 70% of all disputes were either supported in whole or in part by the Ombudsman.

2.6 The majority of complaint enquiries referred to TPO were resolved by providing consumers with further information, signposting to appropriate bodies and/or directing the letting agent to deal with the complaint in accordance with the in-house complaint procedure set out in the TPO Code of Practice.

2.7 Overall, the combined UK 2012 figures represented a 12% increase in letting complaint enquiries and a 22% increase in cases requiring formal reviews compared with 2011. Whilst currently unconfirmed, figures for 2013 indicate an estimated lettings workload increase of 20% on 2012 figures.

2.8 Using the grouping system recently employed by the Office of Fair Trading, TPO data relating to complaint enquiries and formal reviews for the UK in 2012 are displayed in Tables 1 and 2:

Table 1 – UK Complaint Enquiries – Issues

OFT Groups	Issues	Percentage
Group 1 – Fees and charges	1,713	12.22%
Group 2 – Agents providing poor service	7,553	53.88%
Group 3 – Security deposits	878	6.26%
Group 4 – Delayed and substandard repairs	791	5.64%
Group 5 – Unfair business practices	2,676	19.09%
Other	406	2.90%
Totals	14,017	100%

Table 2 – UK Formal Reviews – Issues

OFT Groups	Issues	Percentage
Group 1 – Fees and charges	401	19.77%
Group 2 – Agents providing poor service	1,022	50.39%
Group 3 – Security deposits	183	9.02%
Group 4 – Delayed and substandard repairs	180	8.88%
Group 5 – Unfair business practices	70	3.45%

Other	172	8.48%
Totals	2,028	100%

2.9 Overall UK figures fairly reflect the balance between complaint issue groups in relation to disputes concerning Scottish letting agents referred to TPO.

3. TPO response to the Scottish Government’s call for views on the Housing (Scotland) Bill

Part 1: Right to Buy

3.1 Q1 and Q2 - TPO has no comments on this aspect of the Bill.

Part 2: Social Housing

3.2 Q3, Q4 and Q5 (recorded as Q4, Q5 and Q6 on the ‘Call for views’ document) - TPO has no comments on this aspect of the Bill.

Part 3: Private Rented Housing

3.3 Q6, Q7 and Q8 (recorded as Q7, Q8 and Q9 in the ‘call for views’ document)

Whilst a regulatory regime may be inconsistent with the future minimal requirement for mandatory redress in England, it is likely to be similar to some or all of the initiatives that will be introduced in Wales. Some of the larger letting agents and professional landlords operate across national borders and they and their clients may experience an inconsistency in treatment. Consumer, landlord and agent education will therefore be essential to ensure clarity and compliance for agents and landlords.

Part 4: Letting Agents

3.4 Q9 (recorded as Q10 on ‘call for views’ document) *Do you have any comments on the proposal to create a mandatory register of letting agents in Scotland, and the introduction of statutory provisions regarding letting agents’ practice?*

TPO is supportive of the Scottish Government's objective of introducing a regulatory framework for letting agents to help improve overall levels of service and professionalism within the industry. The framework intends to incorporate a mandatory register of letting agents, with an associated 'fit and proper person test' and the creation of a statutory code of practice to which all letting agents must adhere. The Bill also enables the First-tier Tribunal (FTT) (which is to be established under the Tribunals (Scotland) Bill) to make a range of enforcement orders to provide redress for tenants and landlords in cases where a letting agent fails to comply with that code of practice.

TPO's comments in relation to these aspects of the Bill are discussed below:

Mandatory Register

Section 26 of the Bill describes the national register which the Scottish Government intend to be made available to the public. TPO would suggest that for the reasons later explained in this response, information regarding whether the agent is registered with TPO is also collected and displayed.

Code of Practice

Providing a benchmark for service to be measured against is the key to maintaining and improving standards. It also provides agents with a clear reference point to ensure their business operations are enacted to recognised standards and compliant with relevant legislation. TPO's Code of Practice for Residential Letting Agents currently provides this benchmark and is already applicable to over 300 Scottish letting agent branches. Given that approximately 90% of letting agents in the UK follow the TPO Code, consumers and agents alike are familiar with TPO's Code which provides clear standards on every aspect of a letting agent's service.

TPO understands the Scottish Government's reasoning for developing a mandatory code of practice and as such TPO is keen to offer our experience to the development and implementation process.

3.5 Q10 (recorded as Q11 in 'call for views' document) *Do you have any views on the proposed mechanism for resolving disputes between letting agents and their customers (landlords and tenants)?*

Lettings Complaints

At this stage in the Bill's progress, the Scottish Government may wish to consider the volume and nature of the complaints which could be potentially referred to the FTT. Point 197 of Financial Memorandum (Explanatory Notes) sets out three scenarios regarding the potential number of cases referred to the FTT, which takes into account the additional 481 anticipated complaints relating to letting agents.

In 2012, TPO received 333 complaints from landlords and tenants covering 561 issues. Most enquiries related to more than one issue, a common occurrence in letting disputes. From these enquiries, the majority of issues reported concerned the service provided by letting agents and specifically communication and complaint handling failures. Generally speaking, these disputes arose from of a lack of communication or simple human error. In other words, in only a minority of cases was an agent found to have deliberately breached the TPO Code of Practice. The average compensatory award of £325 underlines the fact that the consequences of these agent shortcomings were relatively minor.

Potential Cost Savings

TPO understands that aside from the structured and formal regulatory approach contained in the Housing (Scotland) Bill, it is the intention of the Scottish Government to allow existing voluntary redress arrangements (such as TPO) to continue and to work alongside mandatory requirements. Given this proposed scenario, it appears there is an opportunity for the Scottish Government to generate significant costs savings if it was of a mind to formalise an arrangement with TPO, allowing consumers wishing to complain about a TPO registered agent to be directed to TPO in the first instance.

At this point we would stress that whilst the Ombudsman's decisions are binding on the letting agent, the consumer is free to either accept or reject his decision and pursue the matter elsewhere. Accordingly, when complaining about a Scottish letting agent, such an arrangement would allow the consumer to retain the right to reject the Ombudsman's decision and refer the matter to the FTT.

TPO would recommend such an arrangement to the Scottish Government on the basis that it would be beneficial to all stakeholders.

Proposed Arrangements

To put such an arrangement into practice, TPO would recommend that the Scottish Government consider discussing the following areas with TPO which could have the potential effect of reducing the FTT's estimated workload and its costs, and shortening the timescale for complaints to be resolved.

a) Consumer Awareness

Ensuring the consumer is aware of the letting agent's membership of TPO will be vital to directing complaints away from the FTT in the first instance, where the matter can be dealt with by TPO. This could be achieved by:

- Displaying the agent's TPO registration within the mandatory register results.
- Requiring letting agents to inform complainants about their voluntary redress arrangements as well as the statutory route to redress either as part of their internal complaint process or at the outset of the transaction.

Both actions would alert and direct landlords and tenants towards the initial option of less formal dispute resolution. It should also be noted that this option will also be relevant where a consumer feels they have been treated unfairly yet the agent appears to not have breached the mandatory code of practice.

b) Ombudsman's Process

Upon referral to TPO, the Ombudsman would carry out his review process, consider the submissions from both parties and propose a resolution. The consumer would be free to either accept or reject that decision. TPO will inform the consumer of their right to refer the matter on to the FTT, should they choose to reject the Ombudsman's decision. TPO will also include the relevant information to allow the consumer to elevate their complaint to the FTT in all of the Ombudsman's decisions.

c) Data-sharing and Monitoring

TPO are used to working within a regulatory framework and regularly provide various statistical reports to the OFT (and soon the CMA) concerning workload and performance on a quarterly basis. TPO can provide similar reports in respect of letting agents to the Scottish Government and other regulatory bodies as required. TPO can adapt, amend or increase the number of reports depending on the requirements of the Scottish Government.

As a guideline, the current reports provided to the OFT are:

- A – Analysis of initial complaint enquiries received. These are 'immature' complaints in that they have not completed the agent's in-house complaint procedure or are simply general enquiries.
- B – Analysis of new cases received
- C – Analysis of non-supported cases by complaint type
- D – Analysis of supported cases by complaint type
- E – Analysis of closed cases by outcome
- F – Analysis of closed cases by time taken
- G – Analysis of requested documentation in different format / language
- H – Analysis of the Ombudsman's awards
- I – Report on cases more appropriately dealt with by the Courts/other independent complaints/conciliation or arbitration service/exceed £25,000 claim

J – Number of complaints not progressed as outside the Ombudsman’s Terms of Reference

K – Membership figures

Accordingly, TPO would be happy to discuss with the Scottish Government their requirements for:

- The development of a formal reporting structure whereby breaches of the mandatory code identified by TPO could be reported to the Scottish Government/FTT.
- The referral process for disputes referred to TPO which would be better dealt with by the FTT.
- The referral process for cases not accepted for consideration by the FTT but could be considered by TPO.
- The provision of case information to the FTT where a complaint has passed through the TPO process and has been elevated to the FTT.
- The provision of TPO membership data for the national register.
- Regular contact to discuss and plan for current and evolving areas of concern and complaint trends.

d) Summary

Overall, TPO is of the view that requiring letting agents to make consumers aware of an alternative route to redress would reduce the level of applications to the FTT and therefore reduce the costs to the Scottish Government. It would also provide consumers with relatively speedy resolutions while allowing the FTT space in which to refine its procedures at the outset. Additionally, where cases have already passed through TPO, information will be made available to the FTT to assist their determination of the case, which may also prove a cost saving for the FTT and for the complainant and the agent.

Part 5: Mobile Home Sites with Permanent Residents

3.6 Q11 and Q12 (recorded as Q12 and Q13 in 'call for views' document)

TPO has no comments on this aspect of the Bill.

Part 6: Private Housing Conditions

3.7 Q13 (recorded as Q14 in 'call for views' document)

TPO has no comments on this aspect of the Bill.

Part 7: Miscellaneous

3.8 Q14 (recorded as Q16 in 'call for views' document)

TPO has no comments on this aspect of the Bill.

Other Issues

3.9 Q15 (recorded as Q17 in 'call for views' document) – Are there any other comments you would like to make on the Bill's policy objectives of specific provisions?

Other than the comments already made in points 3.3, 3.4 and 3.5, TPO has no other comments on the Bill's objectives and specific provisions.

3.10 Q16 (recorded as Q18 in the 'call for views' document) – Are there any other issues that the Scottish Government consulted on that you think should be in the Bill?

Please refer to the comments made in points 3.3, 3.4 and 3.5 above.

4. Closing Comments

4.1 TPO is supportive by the Scottish Government's stated aim of improving and growing the private rented sector by enabling a more effective regulatory system, targeting tougher enforcement action and attracting new investment.

4.2 Given TPO's extensive experience of lettings issues and its prominent position in providing alternative dispute resolution to the lettings sector, we would be pleased to engage further with the Scottish Government throughout its consultation process with the aim of providing Scottish consumers with a robust and efficient redress mechanism.

The Property Ombudsman
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