
How the Surveyors Ombudsman Service demonstrates that it meets the OFT's criteria for approval of estate agents redress schemes

Summary of information

OFT1075

Since 1 October 2008 it is compulsory for residential estate agents to belong to an OFT approved estate agents redress scheme, which will deal with complaints from actual and potential buyers and sellers of residential property in the UK (see The Estate Agents (Redress Scheme) Order 2008 No.1712). The OFT has published criteria for the approval of estate agents redress schemes (OFT919). To date, the OFT has approved two schemes which estate agents can join in order to meet the requirement, the Ombudsman for Estate Agents scheme and the Surveyors Ombudsman Service (SOS), operated by the Ombudsman Service Ltd.¹

Below is a summary of the evidence and proposals which the Surveyors Ombudsman Service provided to demonstrate that its operation will meet the requirements of the OFT criteria and the legislation. For the avoidance of doubt this document is a summary only and does not include all the evidence or proposals which the OFT accepted when approving the Surveyors Ombudsman Service to operate an OFT approved estate agents redress scheme.

Criterion 1: The ombudsman must be independent

Requirements to meet this criterion

- The ombudsman must be and be seen to be impartial and free from bias.
- The ombudsman must not be appointed by those who are subject to investigation by him. This does not exclude minority representation of those subject to investigation on the appointing

¹ For a current list of OFT approved estate agents redress schemes with contact details please see the OFT website page:

www.of.gov.uk/advice_and_resources/resource_base/EARS/

body, provided that the body is entitled to appoint only by majority decision. The procedures of any scheme must ensure that no appointments may be made unless the representation on the Board at the meeting making an appointment is such that those who are subject to investigation are in the minority at that meeting.

- The jurisdiction, powers and method of appointment of the ombudsman should be publicised.
- The ombudsman should be appointed for a period of office for sufficient duration to ensure the independence of his actions and not be removable from his duties without just cause. The appointment should be for a minimum of three years and may be renewable.
- The ombudsman should not, during the three years prior to assuming his present function, have occupied a position in the industry to be regulated, remunerated or otherwise, which may cast doubt about his independence from the industry and his ability to reach impartial decisions.
- The appointment must not be subject to premature termination other than for incapacity or misconduct or other good cause. The grounds on which dismissal can be made should always be stated. Those subject to investigation by the ombudsman should not be entitled to exercise the power to terminate the ombudsman's appointment, but this does not exclude their minority representation on the body which is authorised to terminate.
- The ombudsman alone (or an appointed deputy) must have the power to decide whether or not a complaint is within the ombudsman's jurisdiction. If it is, the ombudsman (or an appointed deputy) must have the power to determine it.
- The ombudsman should be required to report to a body independent of those subject to investigation, but this does not exclude their minority representation on that body. At least one member of the reporting body should be from an organisation representing consumers. The body should also be responsible for safeguarding the independence of the ombudsman.

The SOS Articles of Association (AoA) ensure that the ombudsman is, and is seen to be, independent of the estate agency sector. The AoA require that the ombudsman and independent council members should not be employed by any potential service member firm. The ombudsman has a duty to declare interests which may conflict with his/her duties (Art 89).

All ombudsmen are appointed by the Ombudsman Service Ltd Council (Art 28(a)). The Council is constituted so that there must always be a majority of independent Council members. The Articles are interpreted to mean that any subcommittee of the Council must always have at least twice as many independent members as industry members (Arts 21, 31 and 41).

The AoA and Terms of Reference (ToR) which set out the jurisdiction, powers and method of appointment of the ombudsman are publicly available on the SOS and tOSI websites.

The appointment of the ombudsman is for 5 years and can be made permanent, and the grounds for dismissal are limited. The terms and conditions of appointment must be consistent with and appropriate to the appointment of an independent ombudsman. (Arts 85 and 86). Any decision to terminate the employment of the ombudsman is taken by the Council.

The ombudsman will not have been a director or have been employed by a service member or potential service member within the previous 5 years (Art 87). The Council shall also take into account unpaid roles and consultancies when considering any application for the role of ombudsman to ensure that the independence of the ombudsman is safeguarded and maintained (Art 28(b)).

The ombudsman alone has discretion to decide whether or not a complaint is within the ombudsman's jurisdiction as prescribed by the ToR (ToR paragraph 6.1). The ombudsman then has the power to investigate and determine complaints (ToR paragraph 6.2 – 9.12).

The ombudsman reports to tOSI Council (Art 28(g) and 94). The Council includes a member from a body representing consumers. Any changes to the Council membership in this regard will be notified to the OFT.

An investigation officer may propose a settlement of the dispute which can resolve a complaint if both parties accept it, however either party may ask the ombudsman for a final decision (ToR 9.2). Only an ombudsman will make a final decision on a complaint.

Criterion 2: The scheme must be adequately staffed and funded and be able to demonstrate its ability to attract and retain a sufficient number of potential members to ensure it is viable.

Requirements to meet this criterion

- The scheme must be adequately staffed and funded in such a way that complaints can be effectively and expeditiously investigated and resolved and to allow the ombudsman to function impartially, efficiently and appropriately.

- The scheme operator should be able to demonstrate that it is likely to be able to attract and retain a sufficient number of members to enable it to offer a viable alternative to other schemes in existence and ensure that it operates in the interests of members and consumers.

The SOS scheme was initially funded by the RICS on behalf of its members. Since October 2008 non-RICS members have been eligible to join for the purposes of meeting the CEARA requirement and pay case fees. From January 2009 the service will be funded through case fees for all members, an annual subscription fee for non-RICS members and a levy paid by RICS on behalf of its members equivalent to the subscription fee. Information about fees and charges is made available on the scheme's website.

The ombudsman prepares a draft annual budget which is submitted to the Council (Art 96 AoA). The Council then puts forward the draft annual budget which is then agreed between the Council and the Finance Board (Art 28(l) of the AoA).

The SOS submitted satisfactory information about its staffing and funding plans. tOSI has indicated that this should allow it to effectively and expeditiously investigate and resolve complaints. In November 2007 over 2500 RICS members had registered with the SOS scheme. We are currently satisfied that the SOS is able to attract and retain a sufficient number of members to enable it to offer a viable redress scheme.

Criterion 3: The scheme must be easily accessible to all those entitled to use it.

Requirements to meet this criterion

- The scheme should be directly accessible to complainants.
- The scheme's procedures should be straightforward for complainants to understand and use and not be unduly rigid or formal.
- Those complaining to the ombudsman must be able to do so free of charge.
- The right to complain to the ombudsman should be publicised by each scheme member so that consumers are aware of the scheme at the point at which they choose to use that member.
- The scheme must be easily accessible to complainants without the need for legal representation or assistance.

- The special needs of disadvantaged or vulnerable consumers should be considered so that they, or their representatives, can access the scheme easily.
- The scheme should not deprive the complainant of the right to be represented or assisted by a third party at all stages of the procedure.

The scheme is directly accessible by complainants who can contact it to register a complaint by email, post, fax, textphone, telephone or on-line form. There is a complaints form which can be completed on-line or by telephone, with a copy being sent to the consumer to check and return if the last method is used. The procedures are straightforward for complainants to use and understand without the need for legal representation or assistance. A list of members is on the SOS website to ensure complainants can identify whether a firm is a member.

The scheme is free for complainants (ToR paragraph 12.1).

The SOS requires its members to publicise and signpost the scheme by providing information on their websites and/or in their offices, and by making clear that they are members of the SOS on the first occasion of sending property particulars and/or when terms of engagement are agreed.

The needs of disadvantaged and vulnerable consumers are considered. The SOS has arrangements for translation so that it can supply information in any language and can arrange for a translation of contacts if necessary. It can also provide leaflets in Braille and has textphone facilities for RNID Typetalk Relay and TextDirect services. The scheme allows complainants to be represented or assisted by a third party at all stages of the procedure if they choose.

Criterion 4: Members of the scheme should be required under the terms of the scheme to have an effective internal complaints procedure set out in writing which should include:

- **full contact details**
- **any information the complainant must provide – this must be reasonable and not require excessive detail or form-filling**
- **reasonable timescales for dealing with the complaint, including a timescale for resolution, and**
- **details of the approved redress scheme and how the complainant can access it.**

Members are required to sign a deed poll when they join the scheme which provides that they must comply with the ToR. The ToR 13.1(c) require that they maintain and operate an effective complaints handling procedure (including the elements specified in the Member's Guide and FAQs as amended from time to time). The specified requirements include those set out in criterion 4. The SOS scheme requires its members to have a written complaints procedure including full contact details, advice on what information the member will need from the client which should be reasonable and not require excessive detail, reasonable timescales and information about the complainants right to take unresolved complaints to the SOS.

Criterion 5: The ombudsman must proceed fairly and in accordance with the principles of natural justice.

Requirements to meet this criterion

- The ombudsman is required to make reasoned decisions in accordance with what is fair in all the circumstances, having regard to principles of law and good practice including the principles of good administration. The ombudsman may take into account such factors as he considers relevant in accordance with such practice including but not limited to any inequitable conduct or maladministration.

The ToR provide that the ombudsman must proceed fairly and in accordance with the principles of natural justice and have regard to relevant factors including principles of law, good practice, equitable conduct and good administration (see in particular ToR 8.6(a), (b) and (e)).

Criterion 6: Complainants must be informed that the decision will not be legally binding on them, and that they will have the power to either accept or reject that decision, but that it will be binding on the estate agent if accepted by the complainant. They must also be kept informed of what their alternative or additional actions could be at each stage of the procedure.

The ToR provide that the complainant can either accept the ombudsman's final decision in which case it is binding on the member firm or reject the decision (ToR 9.8). This is explained to consumers in the consumer booklet 'Making a complaint to the Surveyors Ombudsman Service'. The accompanying notes sent with the complaints form, provisional and final conclusion letters and the leaflet 'Making a complaint to the Surveyors Ombudsman Service' explain the alternative or additional actions and other sources of information for complainants.

Criterion 7: The scheme must make provision for dealing with all types of complaints from actual and potential buyers and sellers of residential property against those engaged in estate agency work in the UK. The scheme's complaints handling procedures must include reasonable timescales for dealing with the complaint, including a timescale for a decision to be made.

Requirements to meet this criterion

The scheme should set out:

- The scope of the matters which may be investigated and determined and the criteria to be used to determine whether a complaint should be investigated.
- The duties and powers of the ombudsman in relation to the investigation and determination of complaints.
- The scope of investigation of complaints concerning non-compliance with voluntary codes of practice or other documents with which scheme members have individually agreed to comply.
- Complaints handling procedures including reasonable timescales at all stages of the process, including a timescale for a decision to be made.

The ToR set out the purpose and scope of the scheme and the ombudsman's duties and powers to investigate and determine complaints. This document makes clear that the scheme applies to estate agents as well as surveyors and to complaints made by virtue of a consumer being or having been an actual or potential seller or buyer of residential property, so as to match the scope set out by CEARA. There are a number of circumstances in which the ombudsman shall not accept a complaint. These are set out in the ToR at paragraph 1.5 which sets the limits of the ombudsman's jurisdiction, 6.2 and 11. SOS has agreed to reporting arrangements to monitor complaints rejected under the ToR provisions.

The SOS sets reasonable timescales for dealing with the complaint including a timescale for a decision to be made. Timescales are set out in the notes which accompany the complaints form.

Criterion 8: The scheme's operation and its procedures must be transparent.

Requirements to meet this criterion

The scheme must publicise:

- The types of dispute which may be referred to the scheme.
- The rules governing the referral of matters to the redress scheme.
- The costs of the procedures.
- The decision making arrangements.
- The rules serving as a basis for decisions.
- The legal force of a decision.
- The provision for securing expert advice to assist with an investigation.

The scheme must also:

- Make its decisions and the reasons for them transparent. The names of the parties do not need to be publicised but the content of the complaint and the decision should be.
- In all cases investigated, notify in writing the decision and the reasons for it to the parties concerned.
- Ensure that complainants are provided with clear, comprehensible, and accurate information on the procedure including the process for initiating a complaint, duration of the procedure, possible outcomes, avenues for appeal or review of the decision, and whether the outcome is binding.
- Ensure that wherever possible, complainants are provided with information or help other than legal advice in the completion of necessary forms and documents (for example through the use of standard forms to facilitate the submission of necessary documents).

Scheme operators must:

- Prepare and publish an annual report to the OFT to include details of the outcome of its monitoring and reports of its investigations and decisions.
- Publish easily available information for consumers on the operation of the scheme.

SOS provides information on its website and in its booklet 'Making a complaint to the Surveyors Ombudsman Service' concerning the types of dispute which may be referred to the scheme, the rules governing the referral of matters to the redress scheme, the decision making arrangements, the rules serving as a basis for decisions and the legal force of a decision. These matters are covered in the ToR, FAQs for consumers and member firms, and the note 'Our approach to compensation and awards' all of which are available on the SOS website. The SOS publishes anonymised summaries of decisions including the details the complaint, decision and any award. It provides information on fees and subscriptions for members and potential members. The literature for complainants makes clear that the service is free for them. The SOS ToR explain that in exceptional circumstances an expert report may be arranged (ToR 7.5)

The SOS will, for all complaints, notify the parties of the decision and the reasons for it (ToR 8.6(f) and 9.8). In the event that consideration of a complaint is refused, the reasons for this are explained to the complainant in writing.

The SOS has standard explanations for its processes and a simple standard form that can be completed in a number of ways.

The SOS publishes Annual and Quarterly Reports which are provided to the OFT and available on its website.

Criterion 9: There must be a free exchange of information between all parties relating to a complaint.

Requirements to meet this criterion

- The procedures must allow all the parties concerned to present their viewpoint before the ombudsman and see the arguments and facts put forward by the other party and any experts' statements. Any request for an oral hearing must be considered by the ombudsman (or his 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 must have the authority to request and receive all necessary information and documents from those being investigated subject to parties' rights to refuse to disclose information on legal grounds were the matter proceeding in a court.

When it issues its provisional conclusion report, the SOS provides both parties to the complaint with a detailed summary of the information it is taking in to account. This includes sufficient details of the information, to enable the parties to request any documents (or other material) if they believe there is something they have not seen. If the ombudsman notices that there is key information which one of the parties does not have he/she will proactively send that information. The ombudsman considers all requests for information.

If a party requests that information be treated in confidence, they must give reasons for their request, and the ombudsman will only agree to it in appropriate circumstances, and will inform the other party if confidential information is being taken in to account, the reasons for it, and as far as possible the gist of the information (ToR 7.3).

The ombudsman considers requests for an oral hearing, taking in to account the factors specified in Criterion 9. ToR 7.5 provides for an oral hearing to be arranged where the ombudsman considers it necessary. The SOS has produced FAQs and an information sheet (available on its website) to explain that a hearing may be requested, and what it will take into account in considering such a request.

ToR 7.1 and 7.2 make appropriate provision for the ombudsman to require the member firm and the complainant to disclose any documents and provide any information relating to the consideration of the complaint.

Criterion 10: There must be a range of awards which take into account the level and type of detriment caused.

Requirements to meet this criterion

The range of awards must include the following:

- Providing an apology or explanation
- Paying compensation

- Taking such other actions in the interests of the complainant as the ombudsman may specify, and
- The level and applicability of awards must be publicised.

The ToR provides that the ombudsman can require the types of redress provided for by CEARA (ToR 9.3). The scheme's approach to compensation and awards is set out in a note published on its website.

The SOS has placed a limit of £25000 on awards which it will keep under review to ensure it remains appropriate. In addition, if SOS takes the view that a higher award might be justified by a complaint it will tell the parties and, if appropriate, suggest the member settles at the higher amount.

Criterion 11: The scheme shall ensure that decisions are implemented and that procedures are in place to deal with non-compliance with the ombudsman's decisions and/or the scheme's rules.

Requirements to meet this criterion

- There must be procedures in place to ensure that decisions and the scheme's rules are complied with.
- There must be procedures for non-compliance with decisions and the scheme's rules which include a specified range of sanctions, for example warning letters, fines, expulsions from the scheme, etc.
- The procedures must be fair to the member agent and only allow expulsion for serious issues of non-compliance.

The procedures used to expel a member agent must:

- Be set out clearly and notified to the member at the time of joining the scheme.
- Provide that other sanctions will be adopted in preference to expulsion where appropriate and likely to be effective. Expulsion should be for only the most serious of cases.
- Provide that the person considering expulsion has not been involved in any decisions or issues upon which the expulsion is based.
- Decisions to expel must include the earliest date the agent can apply for readmission and what it is necessary for the agent to do to obtain readmission.

- Provide details of the process to appeal or review the decision.
- The issues around the expulsion may result in the OFT considering the member's fitness to continue to practice under the Estate Agents Act 1979. In these circumstances any decision on expulsion should be delayed until the regulatory proceedings have been determined.
- Provide procedures for application for readmittance after a specified period of time following expulsion including the giving of reasoned decisions.

The SOS has in place a detailed procedure to ensure that decisions and the scheme's rules are complied with. This is provided to members when they join the scheme. An independent committee operated by RICS on behalf of SOS will deal with disciplinary issues if an informal approach has failed. The committee is able to impose a range of sanctions. There are appropriate opportunities for the estate agent to make representations. There is also a possibility of appeal, which will be heard by tOSI's independent reviewer.

In the most serious cases, where other sanctions would be or have been ineffective, the disciplinary committee can make a recommendation to expel. The Council makes the final decision on whether to follow the recommendation. Any decision to expel will be notified to the firm in writing stating the grounds, the time period by which the firm can apply for readmission and any actions the firm is required to do to obtain readmission.

Criterion 12: Appropriate information on complaints dealt with by the redress scheme must be routinely provided to other OFT approved estate agents redress schemes, other consumer redress schemes, the OFT or any other person/organisation exercising regulatory functions in relation to the activities of persons engaging in estate agency work.

Requirements to meet this criterion

- Agreements such as Memoranda of Understanding or similar should be made with other organisations as appropriate.
- Information provided to the OFT or other regulators must include the names and details of the parties involved.
- Procedures ensuring compliance with the Data Protection Act 1998 must be adopted.

The SOS has agreed a MOU with OFT to allow the provision of information as required by CEARA. The SOS and the OEA have a MoU in place. SOS has agreed to enter MOUs with other consumer redress schemes and relevant regulators as appropriate.

The scheme has undertaken to consider whether complaints raise questions about an agent's fitness to act as an estate agent, and if so, to provide appropriate information to the OFT to allow it to exercise its functions under the Estate Agents Act 1979.

Criterion 13: Membership requirements to join the scheme must be fair and ensure that all those who are required to sign up to a redress scheme can do so.

Requirements to meet this criterion

- Membership requirements must not unfairly restrict access to the scheme.
- Only estate agents who have been expelled from a scheme and have not met the requirements for reinstatement, or those who have been banned by the OFT in accordance with section 3 of the 1979 Estate Agents Act can be excluded from membership.
- A compulsory requirement to sign up or comply with a voluntary code of practice cannot form part of the membership criteria.

The SOS has agreed that its scheme is open to all those who are subject to a requirement to join a CEARA approved scheme. Information about fees, charges and membership requirements is made available on the scheme's website. Non-RICS members wishing to join are required to sign a deed poll agreeing to abide by the rules and decisions of the scheme. An explanation of the different requirements for RICS and non-RICS members is available on the SOS website.

Criterion 14: The scheme's effectiveness must be monitored on a regular basis.

Requirements to meet this criterion

- Performance indicators on the scheme's operation to be agreed with the OFT.
- Scheme operator to provide information on customer satisfaction surveys and performance indicators to the OFT at specified intervals.

The SOS has agreed a monitoring programme. Quarterly reports are provided to the OFT on specified performance indicators including information on performance against target timescales, case volumes and award information. Annual customer satisfaction surveys of complainants and member businesses are commissioned from an independent provider. The results of the monitoring are published in the SOS Annual report.

Criterion 15: The scheme operator must publicise the scheme to consumers and to existing and potential members.

Requirements to meet this criterion

- Consumers will need to be made aware of the scheme at the point at which they make a choice to use an estate agent.
- Scheme operators must implement marketing and awareness plans to raise awareness of the scheme to consumers and estate agents. Such plans should incorporate measures to make consumers aware of its scheme at the point at which they choose to use that estate agent.

The SOS publishes a communications plan as part of its business planning process. It has agreed to actively publicise the scheme to consumer advisory bodies, and it has put in place information requirements on its members to ensure that consumers know of the scheme when they use a member. It provides a booklet for consumers and information on its website. It also provides information on its website for members and potential members, and the RICS actively promotes the scheme to RICS members and potential members.

Criterion 16: There must be procedures in place to consider and resolve complaints by consumers or member businesses about the service provided by the ombudsman.

Requirements to meet this criterion

- These procedures should relate only to the service provided by the ombudsman when dealing with the case and not to the decision itself.
- The final decision on the complaint must be made by a person not previously involved in the determination of the complaint and with sufficient authority to direct how the issue may be resolved.

The SOS has a process to consider complaints by consumers or member businesses internally, at the end of which the complaint can be referred to an independent assessor. The independent assessor will give a view on

the complaint, explain the reasons to the complainant, and if appropriate make recommendations to the SOS on what actions it should take. The independent assessor produces an annual statement which is published in full in the annual report.