

## Property

### **Memorandum of Understanding (MOU) between The Royal Institution Of Chartered Surveyors (RICS) and Ombudsman Services: Property (OS:P)**

#### **Background**

1. OS:P (formerly known as Surveyors Ombudsman Service) was appointed by RICS in 2007 to provide a dispute resolution service for its members. Since then, OS:P has been approved by the Office of Fair Trading as a redress mechanism for complaints about estate agents and by the Association of Residential Managing Agents. Participating individuals, firms and companies of OS:P include both RICS members and RICS Regulated firms and other firms and companies within the property sector.

#### **Memorandum of Understanding**

2. The purpose of this MOU is to set out the respective roles and responsibilities of each party and provide a framework for co-operation, co-ordination and exchange of information in order to facilitate good working relationships.
3. RICS and OS:P will work together, taking account of relevance and appropriateness and any statutory obligations, to meet the agreed aims of ensuring that:
  - the direction of complaints and complainants is to the most appropriate resolution scheme or alternative;
  - the sharing of information, subject to any legal constraints including the need to respect personal or commercial confidentiality, which enables the organisation to fulfil their respective functions;
  - there is regular communication to foster the effective resolution of complaints by OS:P.

#### **The role of each party**

4. RICS is a professional body which operates under a Royal Charter and is committed to giving high priority to the public interest and to maintain and advance technical, professional and regulatory standards. Its membership is worldwide and extends to those working in property, land and construction.
5. OS:P is part of The Ombudsman Service Ltd (OS), a company limited by guarantee, which operates a number of dispute resolution schemes. OS Board is independent of its members and of RICS. The OS Board appoints the

Ombudsman and determines the Terms of Reference for the service. OS:P provides independent and impartial resolution of disputes between those who have joined its service and consumers. Participating individuals, firms and companies include members of RICS and regulated firms, estate agents and other property professionals who have opted to join OS:P.

## **Terms of Reference**

6. The Terms of Reference of OS:P are the responsibility of OS Board, which are reviewed from time to time. Proposals for change can be made by RICS. The process for considering and making changes is set out in the Terms of Reference.

## **The role of the Sector Liaison Panel**

7. The Terms of Reference and the Articles of Association set out the governance and role of the Sector Liaison Panel of OS:P, including the role of RICS.

## **Regulatory issues**

8. RICS Regulation is responsible for ensuring that RICS members and regulated firms meet the requirements of RICS' Rules of Conduct. These define the professional, ethical and business standards which are expected and RICS will consider investigating complaints received about RICS members and regulated firms where they may have fallen short of the standards expected of them.
9. The overriding purpose of OS:P is to provide individual redress. In doing so, it will take into account the principles of law and natural justice, good practice, equitable conduct and good administration to arrive at a decision which is fair and reasonable.
10. The Terms of Reference for OS:P set out the duties of participants. These are to maintain and operate an effective complaints handling procedure, to pay the required case fee, to submit to any consideration and investigation of a complaint and to comply with any Final Decision which is accepted by a complainant. Where a participant does not fulfill any of those duties and is a RICS member or RICS regulated firm, OS:P may refer that matter to RICS who will decide whether it is a regulatory matter.
11. The Ombudsman can, at discretion, disclose information about a complaint. For example, if following an investigation, it appears to the Ombudsman that a complaint involves a potential breach of the RICS Rules of Conduct, the Ombudsman has discretion to refer that matter to RICS, who will decide whether it is a regulatory issue. Where the Ombudsman has referred a matter for consideration by RICS, then RICS may notify the Ombudsman of the outcome of its consideration.

## **Provision of Information to RICS about complaints**

12. Information is available through the publication of information by OS:P in their respective Annual Reports, websites and other material. This includes the publication of statistics about the number and type of complaints, the results of customer and participant satisfaction surveys and anonymised summaries of individual complaints to give a broad overview of the complaints considered and determined. Where circumstances will benefit the complainant or in the public interest, they may exchange other information necessary to bring about a resolution to a dispute. The exchange of information is subject to any statutory restriction including data protection.
13. In addition to this, RICS and OS:P where appropriate or where required by any statute will exchange information of a statistical nature regarding enquiries and complaints. OS:P will also provide RICS with management and performance data about the operation of OS:P as may reasonably be required.

## **Provision of information to OS:P**

14. Where required and practically available, RICS will provide OS:P with access to advice and expertise regarding the regulatory framework, practice statements and other information about standards within the property sector and access to any particular specialist advice required in connection with an individual complaint. RICS will also notify OS:P of forthcoming changes of policy likely to affect the consideration of complaints.
15. RICS will provide on a regular basis to OS:P information about which of its members has elected to use OS:P as its independent redress mechanism, to withdraw from using OS:P or any other relevant changes.

## **Complaints about OS:P**

16. Any person directly affected by the functions of OS may raise a complaint about the standard of service provided by the Ombudsman Service (a service complaint) and, if not satisfied with the response, with the Independent Assessor. The Independent Assessor publishes an Annual Report. Where RICS receives a complaint, RICS will either advise a complainant of the procedure or, as appropriate, direct any complaints to the relevant person for consideration.
17. The Terms of Reference empower the Ombudsman to take independent decisions on complaints and include the basis on which the Ombudsman can consider a request to reconsider a concluded complaint. Any review of a service complaint, including that by the Independent Assessor, cannot look at the merits of any decision which includes jurisdiction, the dismissing, rejecting or upholding of a complaint or any redress. RICS will either direct any such complaints to the Ombudsman for his/her response or advise a complainant of that course of action.



## Review

18. RICS and OS:P will meet annually to:
- review this MOU;
  - discuss approaches to case-handling and resolution of complaints;
  - discuss major policy issues, including resources and future development of the service that may affect the successful delivery of redress to consumers and the promotion of high standards within the sector;
  - share information on emerging generic issues, including regulatory developments and other issues which affect consumers or the sector.
19. Nothing in this MOU precludes RICS and OS:P from meeting on an ad hoc basis or from discussing cases (subject to statutory restrictions including that of data protection) where there is a general matter of practice or principle which will require determination.

Signed for RICS

 Date 6/ May 2011

Signed for OS:P

 Date 6 May 2011