



Good for consumers – Good for business

Terms of Reference Annex: Property Sector

1. Interpretation

1.1 The definitions, below, apply to both this Annex and the Terms of Reference in relation to complaints brought to Ombudsman Services: Property against Participating Companies:

“Award” means the compensation awarded to the Complainant not exceeding £25,000 (inclusive of VAT, if any) per complaint;

“Customer” means a person or persons acting outside their business, trade or profession except in relation to residential sales, lettings and management where any buyer, potential buyer/seller and all users of lettings and managing agents can use our services;

“Non-RICS Regulated Firm” and **“Non-RICS Member”** means a firm which is not a RICS Regulated Firm or an individual surveyor and/or estate agent who is not RICS Member and is not employed by or contractually engaged by a RICS Regulated Firm;

“Ombudsman Services: Property” means the Ombudsman Service provided to Ombudsman Services: Property participating companies;

“Participating Company/Companies” means a person who has subscribed to participate in the Services in respect of the Ombudsman Service: Property Sector in accordance with the relevant Terms of Reference and as the context so requires each and/or any of its subsidiary undertakings from time to time, and which has put relevant services and/or products under the jurisdiction of the Ombudsman and the Service **Person** includes any body, body corporate, government, state or agency of any government or state, or any joint venture, association or partnership, and references (express or implied) to **person, he, she or it**, shall be construed so as to include references to such persons, to any natural or legal person and to a person's legal personal representatives and successors;

“Potential Participating Company/Companies” means a person who is not a Participating Company but who, if they subscribed to be a Participating Company would be eligible to be so under the Terms of Reference;

“RICS” means the Royal Institution of Chartered Surveyors;

“RICS Member” means an individual member of RICS as defined in RICS by-laws who is not employed or contractually engaged by a RICS Regulated Firm;

“RICS Regulated Firm” means a firm which is regulated by RICS;

“RICS Regulatory Regime” shall have the meaning provided in paragraph 3.1 (a) below;

“Sector Liaison Panel/ SLP” means the Sector Liaison Panel referred to in Paragraph 8 of this sector annex;

2. Eligibility to become a Participating Company in Ombudsman Services: Property

2.1 Any surveying organisation, management agent organisation, estate agent organisation, letting agent organisation or individual property professional shall be eligible to become a Participating Company in the Ombudsman Services:

Property.

2.2 RICS member firms will not be required to execute a Deed Poll as set out in the Membership Rules for Participating Companies.

3. Services

3.1 The services provided by Participating Companies of the Ombudsman Services: Property which will be covered by, and fall within the jurisdiction of, the Ombudsman and Ombudsman Services: Property are:

- (a) services supplied to customers which fall within the scope of the regulatory requirements placed upon RICS Regulated Firms and RICS Members by RICS under RICS' regulatory regime (hereinafter referred to as the "RICS Regulatory Regime"); or
- (b) any other services supplied to customers for which an Ombudsman redress system may be required by statute or otherwise by any applicable regulatory body's mandatory or voluntary regulatory regime, from time to time, whether such services are provided RICS Regulated Firms, RICS Members, Non-RICS Regulated Firms or Non-RICS Members (hereinafter together referred to as the "Relevant Services"); and
- (c) either;
 - (i) the Participating Company's internal complaints handling procedure has been exhausted but the customer has not accepted any final offer of settlement and no more than 12 months have elapsed since that offer was made known to the customer; or
 - (ii) more than 8 weeks have elapsed since the customer first made his or her complaint to the Participating Company but no action has taken place, nor offer of settlement made by the Participating Company, or the customer has encountered sustained difficulty in registering or progressing a complaint with a Participating Company.

4. Complainants

4.1 Further to, and in addition to, the provisions of the Terms of Reference, the Ombudsman and Ombudsman Services: Property will have jurisdiction in relation to a complaint against a Participating Company if:

- (b) the complaint is made by the customer or a representative of the customer (and such representative has the consent of the customer); and
- (c) the Participating Company was a member of Ombudsman Services: Property when it was made aware of the complaint.

5. Limits on the Ombudsman's Powers

5.1 The Ombudsman shall not accept a complaint about a matter which concerns a dispute solely between providers of services falling within the jurisdiction of the Service in relation to the provision of such services.

6. Disclosure of Information about RICS Member Firms

- 6.1 The Ombudsman will report to the RICS Regulatory Board any cases which involve serious or persistent breaches of the RICS Rules of Conduct by a RICS Regulated Firm or RICS Member.
- 6.2 The Ombudsman will report to RICS any failure by a RICS Regulated Firm or RICS Member to implement remedies contained in a final decision within 28 days of notification that the Final Decision has become binding.

7. Charges and Fees

- 7.1 RICS shall be responsible for the collection of any annual subscriptions of RICS Regulated Firms or RICS Members on behalf of Ombudsman Services: Property and shall be invoiced directly for such subscriptions.
- 7.2 Any Participating Companies which are Non-RICS Regulated Firms or non-RICS Members shall be responsible for the payment of their own annual subscriptions to Ombudsman Services: Property.
- 7.3 Participating Companies shall be obliged to pay any required case fees to the Ombudsman Services: Property, in accordance with the Terms of Reference and the Membership Rules for Participating Companies, and shall be invoiced directly with respect to such case fees.
- 7.4 The RICS shall be solely responsible for the payment of any case fees and the enforcement of any Final Decision of the Ombudsman in the event that any Participating Company which is a RICS Regulated Firm or RICS Member;
- (a) defaults or fails to pay any case fees, contrary to the Terms of Reference and Membership Rules for Participating Companies; or
 - (b) fails to fully implement any Final Decision of the Ombudsman within the stipulated period within paragraph 10.12 of the Terms of Reference.

8. Sector Liaison Panel

- 8.1 The Ombudsman Services: Property shall constitute a Sector Liaison Panel whose constitution and remit will be determined from time to time by the Board.

9. Powers and duties of the Ombudsman

- 9.1 In relation to complaints about estate agency the Ombudsman or his appointed deputy (ies) should not, during three years prior to assuming the present function, have occupied a position in the industry to be regulated, remunerated or otherwise, which may cast about his/her independence from the industry and his/her ability to reach impartial decisions.

28 August 2015