

THE SURVEYORS OMBUDSMAN SERVICE

Terms of Reference

These are the terms of reference approved by the Council in accordance with the Articles of Association of The Ombudsman Service Limited (the Company) for the Surveyors Ombudsman Service (hereinafter referred to as the "Service") for RICS Member Firms and other Non-RICS Member Firms that may, from time to time, join the Service. Certain expressions used in these terms of reference are either defined in the interpretation paragraph below or otherwise in such Articles.

Interpretation

Unless the context otherwise requires, the definitions and interpretations set out below shall apply to these Terms of Reference and, in addition, to the extent not otherwise set out below and not otherwise inconsistent herewith, the definitions and interpretations included in Article 1 of the Articles shall also apply to these Terms of Reference:

"Annual Budget" means each annual financial budget for the Company for the period commencing either from (and including) the commencement of the provision and operation of the Surveyors Ombudsman Service or, if later, from (but excluding) the end of the period covered by the last annual financial budget (in each case, the Budget Commencement Date), and ending on (and including) the next following Company Year End;

"Annual Business Plan" means each annual business plan for the Company for the period commencing either from (and including) the commencement of the provision and operation of Surveyors Ombudsman Service or, if later, from (but excluding) the end of the period covered by the last annual business plan (in each case, the Business Plan Commencement Date), and ending on (and including) the next following Company Year End;

"Articles" means the Articles of Association from time to time of the Company;

"Board of Directors" means the board of directors of the Company;

"Company" means The Ombudsman Service Limited;

"Company Year End" means 31 March in each year, or such other financial year end date as the Company may adopt from time to time;

"consumer" means a person who buys a product or service for personal use. For estate agency work, this will also mean any actual or potential buyer or seller of a residential property;

"Council" means the Board of Directors of the Company, or the members of such Board present at a duly convened meeting of the Council at which a quorum is present, and Council Member means an individual member of the Council;

"Final Decision" means a Final Decision made by the Ombudsman pursuant to and as referred to in these Terms of Reference;

"Finance Board" means a Finance Board constituted in accordance with the Articles where there are two or more Ombudsman Services with Member Boards;

"Memorandum" means the Memorandum of Association from time to time of the Company;

"Non-RICS Member Firm" means either a firm of surveyors and/or estate agents which is not a member firm of RICS or an individual surveyor and/or estate agent which is not a member of RICS or employed by or contractually engaged by a firm of surveyors and/or estate agents which is a member firm of RICS, in accordance with RICS' membership rules in force from time to time;

"Ombudsman" means any ombudsman appointed from time to time by the Council with respect to the Surveyors Ombudsman Service;

"Ombudsman Service" means the ombudsman services which the Company administers in accordance with the Articles and the Terms of Reference;

"Relevant Services" shall have the meaning provided in paragraph 1.2 below

"Remedy" and "Remedies" shall have the meaning attributed to them in paragraph 9.3 below;

"RICS" means the Royal Institution of Chartered Surveyors;

"RICS Member Firm" means either a firm of surveyors and/or estate agents which is a member firm of RICS or an individual surveyor and/or estate agent member of RICS not employed by or contractually engaged by a firm of surveyors and/or estate agents which is a member firm of RICS, in accordance with RICS' membership rules in force from time to time;

"RICS Regulatory Regime" shall have the meaning provided in paragraph 1.2(a) below;

"subsidiary undertaking" has the meaning given in section 258 of the Act; and

"Surveyors Ombudsman Service" means the Ombudsman Service provided to Surveyors Ombudsman Service Members;

"Surveyors Ombudsman Service Member" means a surveying and/or estate agent firm or individual surveyor and/or estate agent admitted into the Surveyors Ombudsman Service by the Council in accordance with these Terms of Reference (and (as the context so requires) each and/or any of its subsidiary undertakings from time to time) which has put its relevant services under the jurisdiction of the Ombudsman and the Surveyors Ombudsman Service;

"the Surveyors Ombudsman Service Member Board" means the Member Board referred to in Paragraphs 3 and 4 (inclusive) of these Terms of Reference, or the members of such Board present at a duly convened meeting of the Surveyors Ombudsman Service Member Board at which a quorum is present; and

“Surveyors Ombudsman Service Board Member” means an individual member of the Surveyors Ombudsman Service Member Board.

Words importing the singular number include the plural and vice versa.

Words importing the masculine include the feminine and vice versa.

References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time modified, amended re-enacted or supplemented.

References to any "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.

Unless the context otherwise requires, references to paragraphs and subparagraphs are to paragraphs and sub-paragraphs of these Terms of Reference.

These Terms of Reference are to be read and construed subject to the Articles and Clause 3 of the Memorandum and, in the event and to the extent of any conflict or inconsistency between the provisions of these Terms of Reference and the provisions of the Articles or Clause 3 of the Memorandum, the provisions of the Articles and/or such Clause 3, as the case may be, shall prevail and apply.

1 Purpose and Scope

1.1 **Purpose, Scope and Complaints** - The main purpose of the Service is:

- (a) the receipt and handling of unresolved complaints made by consumers to firms of surveyors and/or estate agents and individual surveyors and/or estate agents which are RICS Member Firms and to Non-RICS Member Firms that may from time to time join the Service;
- (b) the resolution, settlement and/or withdrawal of such unresolved complaints or disputes between such Surveyors Ombudsman Service Members and any of their consumers; and
- (c) where appropriate, the provision of remedies and redress in respect of matters that form the subject-matter of such unresolved complaints or disputes,

in respect of the supply of (or failure to supply) services by Surveyors Ombudsman Service Members or by virtue of a consumer being or having been an actual or potential seller or buyer of residential property.

1.2 **Services** - The services provided by Surveyors Ombudsman Service Members which shall be covered by, and fall within the jurisdiction of, the Ombudsman and the Surveyors Ombudsman Service are:

- (a) services supplied to consumers which fall within the scope of the regulatory requirements placed upon RICS Member Firms by RICS under RICS' regulatory regime which applies to RICS Member Firms from time to time (hereinafter referred to as the "RICS Regulatory Regime"); and
- (b) any other services supplied to consumers 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 by RICS Member Firms or Non-RICS Member Firms (hereinafter together referred to as the "Relevant Services").

1.3 **Eligibility for Membership of the Surveyors Ombudsman Service –**

- (a) The RICS Regulatory Regime requires RICS Member Firms to be members of an appropriate redress scheme which is approved by RICS' Regulatory Board. RICS Member Firms that are covered by the requirements of the RICS Regulatory Regime are therefore eligible to become members of the Surveyors Ombudsman Service.
- (b) Either (1) a Non-RICS Member Firm which is required to be a member of an appropriate ombudsman redress scheme with respect to the provision of Services (as defined in paragraph 1.2 above) in accordance with the regulatory regime to which it is subject from time to time, or (2) a Non-RICS Member Firm which decides to be a member of such an ombudsman redress scheme of its own volition with respect to the provision of Relevant Services, may be eligible to become a member of the Surveyors Ombudsman Service in accordance with the provisions of these Terms of Reference.

1.4 **Jurisdiction** – Upon becoming Surveyors Ombudsman Service Members, all Surveyors Ombudsman Service Members (to the extent that they offer, supply or provide Services specified in paragraph 1.2 above) shall accept and be subject to the jurisdiction of the Surveyors Ombudsman Service and the Ombudsman in relation to complaints regarding such services.

1.5 **Complainants** – The Ombudsman and the Surveyors Ombudsman Service shall only have jurisdiction in relation to a complaint against a Surveyors Ombudsman Service Member if:

- (a) the complaint is made by the consumer or a nominated representative of the consumer (and such nominated representative has the written consent of the consumer); and
- (b) the Surveyors Ombudsman Service Member's internal complaints handling procedure has been exhausted but the complainant has not accepted the relevant Surveyors Ombudsman Service Member's final view or offer of settlement and no more than six months have elapsed since that view/offer was made known to the complainant; or
- (c) more than 8 weeks have elapsed since the complainant first made his/her complaint to the Surveyors Ombudsman Service Member but no action has taken place, nor offer of settlement made by the Surveyors Ombudsman Service Member, or the

complainant has encountered sustained difficulty in registering or progressing a complaint with a Surveyors Ombudsman Service Member;

- (d) no more than nine months have elapsed since the complainant made the initial complaint to the relevant Surveyors Ombudsman Service Member;
- (e) with respect to services carried out in England, Wales and Northern Ireland, the complainant gave the relevant Surveyors Ombudsman Service Member notice of the subject of the complaint within twelve months of first knowing of the matter and provided that the complainant did not have knowledge of such matter prior to 1 June 2007; or
- (f) with respect to services carried out in Scotland, the complaint is one which is either being considered or which could have been considered by RICS' Surveyor Ombudsman Scheme pilot (which requires that the subject of the complaint occurred in Scotland on or after 1 January 2004) and with respect to which the complainant gave the relevant Surveyors Ombudsman Service Member notice of the subject of the complaint within twelve months of first knowing of the matter.

2 Governance of the service

- 2.1 The Ombudsman is appointed by, and responsible to, the Council. The Council shall, as necessary, convene a group to recommend the appointment of an Ombudsman, which shall include such independent lay representatives of RICS as agreed by the Council.
- 2.2 In determining any complaints made in accordance with these Terms of Reference the Ombudsman shall act independently of the Council, the Surveyors Ombudsman Service Member Board, the Finance Board, the Surveyors Ombudsman Service Members, RICS and complainants.
- 2.3 The Surveyors Ombudsman Service shall be administered by the Company in accordance with the Memorandum and Articles, and these Terms of Reference.
- 2.4 The Articles provide for the constitution of a Council being the Board of Directors of the Company with the powers and duties defined in the Articles.
- 2.5 The Articles provide for the establishment of a Member Board for each and any Ombudsman Service administered by the Company and constituted in accordance with the relevant Terms of Reference and with the powers and duties defined in the Articles.
- 2.6 The Surveyors Ombudsman Service Member Board may appoint one or such other number as may be agreed from time to time by the Council as Industry Council Member(s).

3 The Member Board of the Surveyors Ombudsman Service

- 3.1 The Surveyors Ombudsman Service Member Board shall consist of seven members or such other number as may from time to time be determined by the Surveyors Ombudsman Service Member Board in consultation with the Council.
- 3.2 The Surveyors Ombudsman Service Member Board shall be made up of:
- (a) an independent Chairman (not being an Independent Council Member or an individual from a Service Sector which this Member Board represents) nominated and appointed by RICS' Independent Appointments Selection Board (IASB);
 - (b) an equal number of independent members (not being Independent Council Members or individuals from a Service Sector which this Member Board represents) and members representing RICS Member Firms, each nominated and appointed by RICS' IASB or any other mix that may be determined from time to time by RICS and the Member Board in consultation with the TOSL Council in the light of experience and the development of the Service; and
 - (c) one member nominated and appointed by the Council from amongst its Independent Council Members.
- 3.3 All Surveyors Ombudsman Service Board Members shall be appointed to serve for a period of between two and four years. This may be varied only in the first two years of the Service to take account of experience and the development of the Service.
- 3.4 The Surveyors Ombudsman Service Member Board's powers, duties and conduct shall be as detailed in Articles 101 and 103 to 122 (inclusive) of the Articles.
- 3.5 The Surveyors Ombudsman Service Board Members appointed by and from the Independent Council Members shall be appointed to serve for a period of up to two years with an option for the Independent Council Members to renew such appointments for one further period of up to two years or, in each case, such lesser periods as conform to the periods for which such persons are appointed to serve as Independent Council Members but nothing herein shall prevent the same person if eligible from being appointed thereafter for a further like term or terms if the Council so decides.

4 Disqualification and removal of Surveyors Ombudsman Service Board Members

- 4.1 The office of a Surveyors Ombudsman Service Board Member shall be automatically vacated if he/she:
- (a) in the reasonable opinion of the Surveyors Ombudsman Service Member Board, becomes of unsound mind; or

- (b) does any act or finds himself/herself in any position which, in the reasonable opinion of the Surveyors Ombudsman Service Member Board, is likely to lead him/her, the Surveyors Ombudsman Service Member Board, the Surveyors Ombudsman Service or the Company into disrepute; or
- (c) does any act or finds himself/herself in any position which, in the reasonable opinion of the Surveyors Ombudsman Service Member Board, conflicts or is likely to conflict with his/her position and/or the exercise of his/her powers and/or duties as a Surveyors Ombudsman Service Board Member, or the effective operation of the Surveyors Ombudsman Service, the Ombudsman or these Terms of Reference; or
- (d) is an Independent Council Member appointed as a Surveyors Ombudsman Service Board Member pursuant to paragraph 3.2 above and ceases to be an Independent Council Member; or
- (e) is an individual employed by or contractually engaged by a firm of surveyors and/or estate agents which is a RICS Member Firm appointed as a Surveyors Ombudsman Service Board Member pursuant to paragraph 3.2 above and ceases to be employed by or contractually engaged by such RICS Member Firm; or
- (f) is an individual surveyor and/or estate agent member of RICS not employed by or contractually engaged by a firm of surveyors and/or estate agents which is a member firm of RICS and appointed as a Surveyors Ombudsman Service Board Member pursuant to paragraph 3.2 above and ceases to be an individual surveyor and/or estate agent member of RICS; or
- (g) does not have their appointment as an Surveyors Ombudsman Service Board Member renewed after the expiry of their term of appointment.

4.2 Should the office of a Surveyors Ombudsman Service Board Member be vacated pursuant to paragraph 4.1 above, a new Surveyors Ombudsman Service Board Member will be appointed by RICS' IASB.

4.3 In any event, any course of action taken by the Surveyors Ombudsman Service Member Board pursuant to paragraph 4.2 shall only apply to the remainder of the term of the office determined by reference to paragraph 3.3.

5 Ombudsman's principal aim

The Ombudsman's principal aim is to receive complaints made by complainants in accordance with these Terms of Reference and to consider and, where appropriate, investigate such complaints in order to encourage and/or facilitate the terms of their resolution, settlement and/or withdrawal.

6 Acceptance of complaint

- 6.1 The Ombudsman has discretion to decide whether a complaint is within the Ombudsman's jurisdiction, as prescribed by these Terms of Reference.
- 6.2 The Ombudsman has discretion to refuse to accept (or to terminate consideration of) a complaint, if he/she considers that the complainant has no reasonable prospect of success, recovery or redress in relation either to such complaint and/or the Surveyors Ombudsman Service Member(s) to which such complaint relates.

7 Provision of information

- 7.1 Upon accepting a complaint for consideration the Ombudsman shall inform the relevant Surveyors Ombudsman Service Member that the complaint has been accepted and may require the Surveyors Ombudsman Service Member to disclose any documents and to provide any information that the Ombudsman may lawfully and reasonably request relating to his or her consideration of the complaint.
- 7.2 The Ombudsman may additionally require a complainant to disclose any documents and to provide any information that the Ombudsman may lawfully and reasonably request relating to his or her consideration of a complaint.
- 7.3 Information passed to the Ombudsman will be disclosed to the other party unless reasons are given setting out circumstances justifying non-disclosure. These circumstances should be limited and exceptional (for example, issues such as personal security of the complainant, or member or a third party). If the request for confidentiality is accepted, the Ombudsman will notify the other party that there is confidential material which the Ombudsman does not propose to disclose, the basis on which it is withheld and, as far as possible, the gist of the evidence.
- 7.4 The Ombudsman's decision (in its sole discretion) as to whether to keep any information in confidence from any party shall be final and binding.
- 7.5 In exceptional circumstances, where the Ombudsman considers it necessary (as a matter of sole discretion) a site visit, expert report or a face-to-face meeting (or hearing) may be arranged.

8 Handling complaints and the ombudsman's investigation

- 8.1 The Ombudsman will seek to achieve a mutually acceptable settlement of a complaint wherever practical and appropriate.
- 8.2 If the complaint is not resolved by a mutually acceptable settlement or withdrawn, the Ombudsman may conduct a formal investigation of the complaint.
- 8.3 The procedure for the conduct of an investigation will be such as the Ombudsman considers appropriate in the particular circumstances of the case and may require such assistance of

the parties to the complaint (including in relation to access, information and written or oral submissions) as the Ombudsman may consider reasonable and appropriate.

- 8.4 Where an investigation has been conducted, the Ombudsman will inform, in writing, the complainant and the Surveyors Ombudsman Service Member(s) concerned of the Ombudsman's provisional conclusions and suggested Remedies (as defined in paragraph 9.3 below) and, in each case, the reasons for them and will invite their comments thereon, to be received within a specified period thereafter.
- 8.5 If, after investigation, the Ombudsman considers that the Surveyors Ombudsman Service Member(s) (against which a complaint has been made) is already offering (and continues to offer) a fair and reasonable settlement (even if it is not acceptable to the complainant), or if the Ombudsman considers that no settlement is required, the Ombudsman may exercise discretion to terminate consideration of the complaint.
- 8.6 In handling complaints, carrying out investigations and reaching any Final Decision (as provided for hereunder) it shall be the duty of the Ombudsman:
- (a) to proceed fairly and in accordance with the principles of natural justice;
 - (b) to make reasoned decisions in accordance with what is fair and reasonable in all the circumstances having regard to principles of law, good practice, equitable conduct and good administration;
 - (c) to decide whether to continue or discontinue the consideration of a complaint;
 - (d) save with the prior written consent of the relevant parties and subject to paragraphs 7.3, 8.6(a) above, and 8.6(e) and 10.2(e) below, not to disclose the fact of, parties to or details of any complaint, its resolution or enforcement to persons other than the parties to the complaint, the Ombudsman, the Council and the Surveyors Ombudsman Service and such officers, employees, agents and advisers of each of such persons as are duly authorised for such purposes;
 - (e) to have regard to any applicable rule of law, the terms of any relevant contract, any relevant judicial authority or regulatory provision, any relevant codes of conduct or practice, any guidance of a general nature given by the Council and what is, in the Ombudsman's opinion, best practice in the handling of complaints; and
 - (f) to give reasons for any decision made or conclusion reached.
- 8.7 Notwithstanding paragraphs 8.6(a) and 8.6(e) above, the Ombudsman shall not be bound by any legal rule of evidence or by the past conduct or decisions of, or the past remedies or awards imposed by, the Ombudsman or the Surveyors Ombudsman Service.

9 The Ombudsman's final decision

- 9.1 If the complainant and the relevant Surveyors Ombudsman Service Member(s) accept the Ombudsman's provisional conclusions, then such provisional conclusions will become the binding settlement of the dispute.
- 9.2 If either the complainant or the relevant Surveyors Ombudsman Service Member(s) or both do not accept the Ombudsman's provisional conclusions, then the Ombudsman will issue a Final Decision, including his or her reasons therefore. Such Final Decision shall be made after considering any representations the complainant or the relevant Surveyors Ombudsman Service Member(s) or both may make in relation to the provisional conclusions.
- 9.3 When a binding settlement of the dispute is issued or the Ombudsman issues a Final Decision (either under paragraph 9.1 or 9.2 above) which concludes that a Surveyors Ombudsman Service Member has not acted fairly or reasonably, the Ombudsman will set out his or her reasons in writing and may, subject to paragraphs 9.5 and 9.6 below, impose any of the following remedies requiring the Surveyors Ombudsman Service Member(s) to:
- (a) provide an apology or explanation to the complainant;
 - (b) award to the complainant, compensation not exceeding £25,000 (inclusive of VAT per complaint (an Award));
 - (c) take some other practical action of direct benefit to the complainant; or
 - (d) provide any combination of the above remedies.

Each remedy set out in paragraphs 9.3(a) to (d) above shall be referred to as a "Remedy" and any combination thereof as "Remedies".

- 9.4 The Ombudsman may also, as a result of considering a complaint, make recommendations to a Surveyors Ombudsman Service Member(s) about changing its policies or procedures, including in relation to the provision of its services.
- 9.5 The total value of all Remedies to be provided or complied with by a Surveyors Ombudsman Service Member to or for the direct benefit of a complainant in respect of a complaint shall not exceed £25,000 (inclusive of VAT (if any)).
- 9.6 No Award or Remedy shall contain a punitive element nor be of greater amount than in the reasonable opinion of the Ombudsman is appropriate to compensate the complainant for loss or damage or inconvenience suffered by reason of the acts or omissions of the Surveyors Ombudsman Service Member against and in respect of which the Award or Remedy is made.
- 9.7 No Award or Remedy will be made against a complainant.
- 9.8 The Final Decision shall be issued in writing and shall state the Remedies to be provided and a summary of the Ombudsman's reasons for reaching the Final Decision. A copy of the Final Decision shall be given to the complainant and the relevant Surveyors Ombudsman Service Member(s) together, in the case of the complainant, with an acceptance form (addressed to the Ombudsman) (the Acceptance Form) to be duly completed and signed by the complainant and returned to the Ombudsman within two months of the date of the Final Decision (the Acceptance Period). The Final Decision shall state that if, within the Acceptance Period (or

such longer period as the Ombudsman may consider reasonable), the complainant replies to and accepts the Final Decision in full and final settlement of the subject matter of the complaint (by duly completing, signing and returning the relevant Acceptance Form), the Final Decision shall (save in the event of fraud or manifest error) be binding on the complainant and the relevant Surveyors Ombudsman Service Member(s).

- 9.9 If the complainant does not reply to the Final Decision within the Acceptance Period (or such longer period as the Ombudsman may consider appropriate), then the Final Decision will not be binding on the relevant Surveyors Ombudsman Service Member(s) and it will be open to the complainant to initiate any other proceedings to which the complainant is entitled in pursuit of the complaint.
- 9.10 If within the Acceptance Period (or such longer period as the Ombudsman may consider reasonable) the complainant replies to the Final Decision but does not accept it in full and final settlement of the subject matter of the complaint, then the Final Decision will not be binding on the relevant Surveyors Ombudsman Service Member(s) and it will be open to the complainant to initiate any other proceedings to which the complainant is entitled in pursuit of the complaint.
- 9.11 If the Final Decision becomes binding on the complainant and the relevant Surveyors Ombudsman Service Member(s) in accordance with paragraph 9.8, the Ombudsman shall notify the relevant Surveyors Ombudsman Service Member(s) of such fact within 14 days of his or her receipt of the complainant's duly completed and signed Acceptance Form. The relevant Surveyors Ombudsman Service Member(s) shall then provide the Remedy (including any Award (if any)) to the complainant within 28 days of the Ombudsman's notification.
- 9.12 If the Final Decision does not become binding on the complainant and the relevant Surveyors Ombudsman Service Member(s) in accordance with paragraph 9.9 or 9.10, then the Ombudsman shall notify the complainant and the relevant Surveyors Ombudsman Service Member(s) of such fact within 14 days following the end of the Acceptance Period (or such longer period as the Ombudsman may consider reasonable).

10 Powers and duties of the Ombudsman

- 10.1 The Ombudsman shall have the following powers and duties:
- (a) to report on the non-compliance with a decision of the Ombudsman (including in relation to any Awards or Remedies imposed by the Ombudsman) by an Surveyors Ombudsman Service Member, as set out in *the 'The implementation of the Ombudsman's decisions and adherence with the Service's rules'*.
 - (b) to report to the RICS Regulatory Board any cases which **involve** serious or persistent breaches of the RICS' Rules of Conduct by RICS Member Firms;
 - (c) to ensure the efficient, effective and economical use of resources;
 - (d) to ensure, so far as reasonably practicable, equality of access to the Surveyors Ombudsman Service by complainants irrespective of age, disability, gender, race, religion or sexual orientation;

- (e) to advise consumers through his/her office how to make a complaint under these Terms of Reference;
- (f) to enter into Memoranda of Understanding with any bodies the Ombudsman considers fit on matters of common interest, including the exchange of information (subject to paragraphs 7.3 and 8.6(d) above);
- (g) to attend meetings of the Council when asked to do so on reasonable notice and to provide them with such information (other than about individual complaints) as they may reasonably request;
- (h) annually to assist the Executive of the Company in the preparation of a draft Annual Business Plan and Annual Budget for the period commencing on and from the next Business Plan Commencement Date, for presentation to the Council by not later than the 31 December falling immediately prior to the relevant Business Plan Commencement Date;
- (i) to prepare, each year, a Surveyors Ombudsman's Service Report (which shall be distinct from the annual report of the Company) on the discharge of the Ombudsman's functions during the most recently ended Ombudsman's Reporting Period and provide it to the Council and the Surveyors Ombudsman Service Member Board for publication within such period following the end of such Ombudsman's Reporting Period as the Council shall determine;
- (j) to encourage and promote good practice by Surveyors Ombudsman Service Members in the handling of complaints they receive;
- (k) to develop and sustain discussions with RICS, surveying firms and/or estate agents and consumer bodies about matters relevant to the Surveyors Ombudsman Service; and
- (l) to refer to the Council complaints received by him or her about the Surveyors Ombudsman Service and/or the Ombudsman.

10.2 In addition to the powers conferred elsewhere in these Terms of Reference, the Ombudsman may:

- (a) incur expenditure for the purposes of the functions of the Surveyors Ombudsman Service, subject to and to the extent such are provided for in the then current Annual Business Plan and Annual Budget as approved by the Council and the Surveyors Ombudsman Service Member Board;
- (b) recruit, appoint, train, manage and remove staff, subject to and to the extent such are provided for in the then current Annual Business Plan and Annual Budget as approved by the Council and the Surveyors Ombudsman Service Member Board;
- (c) delegate, subject (where necessary) to the approval of the Council, any of the Ombudsman's powers and duties to members of the staff of the Surveyors Ombudsman Service, provided that, in delegating any such powers and duties, the Ombudsman shall exercise all reasonable care and skill to ensure that the delegate

discharges all such powers and duties in accordance with the standards expected of an Ombudsman save that the Ombudsman shall not delegate the power to make Final Decisions;

- (d) subject to the approval of the Council and the provisions of sub-paragraph (a) above, determine the terms and conditions of service/employment of the staff of the Surveyors Ombudsman Service;
- (e) publish individual determinations and digests of complaints in anonymised form (i.e. in which the parties are not identified); and
- (f) recommend systemic changes in policy or procedure relating to dispute handling within the surveying and/or estate agency industry and, in his or her discretion, to publish such recommendations.

10.3 Notwithstanding the above, the Ombudsman shall not exercise any powers which are explicitly conferred upon the Council or the Surveyors Ombudsman Service Member Board.

11 Limits on the ombudsman's powers

11.1 The Ombudsman shall not accept a complaint for consideration unless:

- (a) the complainant gave the relevant Surveyors Ombudsman Service Member(s) notice of the matter the subject of the complaint within twelve months of first knowing of the matter; and
- (b) either (i) the Surveyors Ombudsman Service Member has provided the complainant a written, or otherwise recorded, communication which states, or, in the sole opinion of the Ombudsman, implies, either that the Surveyors Ombudsman Service Member's final position has been reached or that the Surveyors Ombudsman Service Member is otherwise unable or unwilling to resolve the complaint to the complainant's satisfaction (a deadlock letter), or

(ii) the Surveyors Ombudsman Service Member has not issued a deadlock letter within 8 weeks of the complainant's notice (as referred to in paragraph 11.1(a) above) (or such longer period as the Ombudsman may consider reasonable) has not made an offer of settlement or the complainant has encountered sustained difficulty in registering or progressing a complaint with a Surveyors Ombudsman Service Member; and
- (c) the complaint is made to the Ombudsman within six months of the issue of the deadlock letter or, if no deadlock letter has been issued, within nine months of the complainant first giving notice of the complaint to the Surveyors Ombudsman Service Member (as referred to in paragraph 11.1(a) above); the Ombudsman has discretion, however, to accept a complaint made out of time if satisfied that there are exceptional reasons to justify the delay.

11.2 The Ombudsman shall not accept a complaint about a matter:

- (a) of which the complainant had notice before
 - (i) the commencement of the provision and operation of the Surveyors Ombudsman Service in England, Northern Ireland and Wales on 1st June 2007 with respect to services carried out in England, Northern Ireland and Wales, or 1st January 2004 in Scotland with respect to services carried out in Scotland, or
 - (ii) the date when the relevant Surveyors Ombudsman Service Member became a Surveyors Ombudsman Service Member,

whichever is the later;

- (b) to the extent such matter has been or is the subject of court proceedings or arbitration or some other independent procedure for the determination of disputes brought by the complainant (unless such proceedings, arbitration or other procedure have been abandoned, stayed or suspended either by or with the consent of the relevant court, arbitral or procedural body or with the written consent of the relevant Surveyors Ombudsman Service Member(s));
- (c) which either does not concern or relate to the complainant or to a service (or failure to provide a service) of the relevant Surveyors Ombudsman Service Member falling within the jurisdiction of the Surveyors Ombudsman Service **or is not a complaint made a consumer by virtue of his being or having been an actual or potential seller or buyer of residential property;**
- (d) which concerns or relates to terms of employment or other personnel issues of, in each case, the complainant;
- (e) if it appears to the Ombudsman that it is more appropriate that the complaint be dealt with by a court, by arbitration or under another complaints or conciliation procedure;
- (f) if it appears to the Ombudsman that the complaint is frivolous or vexatious;
- (g) to the extent that the complaint relates to a Surveyors Ombudsman Service Member's commercial judgment in determining whether and, if so, on what terms a service is to be provided; or
- (h) which concerns a dispute solely between providers of surveying and/or estate agency services falling within the jurisdiction of the Surveyors Ombudsman Service in relation to the provision of such services.

11.3 In relation to any matter forming the subject of a complaint in respect of which the Ombudsman has previously reached a decision or conclusion (a Concluded Complaint), the Ombudsman shall not accept or consider:

- (a) a new complaint the subject matter of which and the parties to which are the same (or substantially the same) as those addressed in relation to the Concluded Complaint; or

- (b) a request to reconsider the Concluded Complaint, unless, in exceptional circumstances, the Ombudsman is of the opinion that (i) significant evidence or facts not available at the time of, or not taken into account in, the Ombudsman's consideration of the Concluded Complaint have come to the attention of the Ombudsman, and (ii) had such evidence or facts been so available or taken into account it is reasonably likely that the decision or conclusion reached in relation to the Concluded Complaint would have been substantially different.

12 Charges and case fees

- 12.1 The Ombudsman will make no charge to complainants for the consideration of their complaints.
- 12.2 RICS shall be responsible for the collection of any annual subscriptions of RICS Member Firms to the Surveyors Ombudsman Service and shall be invoiced directly for such subscriptions by the Surveyors Ombudsman Service.
- 12.3 Any Surveyors Ombudsman Service Members which are Non-RICS Member Firms shall be responsible for the payment of their own annual subscriptions to either RICS or the Surveyors Ombudsman Service as appropriate.
- 12.4 Surveyors Ombudsman Service Members shall be obliged to pay any required case fees to the Company in respect of Surveyors Ombudsman Service in accordance with the Articles and shall be invoiced directly with respect to such case fees.
- 12.5 In the event that any Surveyors Ombudsman Service Members which are RICS Member Firms default or fail to pay any case fees (in accordance with the Articles and these Terms of Reference) or fully implement any Final Decision of the Ombudsman within the stipulated period (in accordance with paragraph 13.1(b)), the RICS shall be solely responsible for the payment of any such fees and the enforcement of any such Final Decision of the Ombudsman.

13 Duties of each member

- 13.1 Each Surveyors Ombudsman Service Member undertakes to:
 - (a) submit to any consideration or investigation of a complaint by the Ombudsman and the Surveyors Ombudsman Service to which it is a party, pursuant to and in accordance with these Terms of Reference, including in the event that it ceases to be a Surveyors Ombudsman Service Member, with respect to any complaint which originated prior to such cessation;
 - (b)
 - (i) comply with, and continue to comply with after ceasing to be a Surveyors Ombudsman Service Member, any Final Decision (including any Remedy and Award) which, in accordance with these Terms of Reference, is made by

the Ombudsman against it and is duly accepted by the complainant and which is binding on it and the relevant complainant under these Terms of Reference; and

- (ii) in the event of ceasing to be a Surveyors Ombudsman Service Member, to comply with any Final Decision (including any Remedy and Award) which, in accordance with these Terms of Reference, is made by the Ombudsman after the date of such cessation against it and is duly accepted by the complainant and which is binding on it and the relevant complainant under these Terms of Reference, which relates to any complaint which originated prior to such cessation;
 - (c) 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) for the resolution of complaints in relation to matters which could be the subject of consideration or investigation by the Ombudsman and the Surveyors Ombudsman Service, being a procedure under which the complaint, if not previously resolved, settled or withdrawn is addressed by the dispatch of a deadlock letter (as defined in paragraph 11.1(b) above);
 - (d) signpost complainants effectively to the Service as outlined in the Member's Guide and FAQs (as amended from time to time); and
 - (e) ensure that it and, as appropriate, each of its relevant subsidiary undertakings complies with, observes and performs the obligations and duties of a Surveyors Ombudsman Service Member under the Terms of Reference, the Articles, the Deed Poll (where applicable in accordance with these Terms of Reference) and/or otherwise in connection with the Surveyors Ombudsman Service.
- 13.2 Where a firm becomes a Surveyors Ombudsman Service Member but is a Non-RICS Member Firm, it shall, contemporaneously with becoming a Surveyors Ombudsman Service Member, execute a deed poll (in the form set out in the Schedule hereto or in such other form as may, subject to the approval of the Surveyors Ombudsman Service Member Board, be prescribed by the Council from time to time) (the "Deed Poll") which shall, inter alia, enable a complainant to enforce any Remedy and/or Award directly against such Surveyors Ombudsman Service Member.
- 13.3 Whilst a Surveyors Ombudsman Service Member which is a RICS Member Firm shall not be required to execute a deed poll contemporaneously with becoming a Surveyors Ombudsman Service Member, RICS shall be responsible for ensuring that any Surveyors Ombudsman Service Member which is a RICS Member Firm shall comply with any Final Decision (including any Remedy and Award) which, in accordance with these Terms of Reference, is made by the Ombudsman against it and is duly accepted by the complainant and which is binding on it and the relevant complainant under these Terms of Reference.
- 13.4 Subject to Article 15 of the Articles, a Surveyors Ombudsman Service Member which is a Non-RICS Member Firm shall give not less than six months' notice in writing to the Secretary of termination of its membership of the Surveyors Ombudsman Service and a Surveyors Ombudsman Service Member which is a RICS Member Firm shall give not less than six months' notice in writing to the Secretary of termination of its membership of the Surveyors

Ombudsman Service if such RICS Member Firm is intending to transfer to another redress scheme.

14 Review of the terms of reference

The Council will complete a review of these Terms of Reference periodically, in consultation with the Surveyors Ombudsman Service Member Board, as seems appropriate from time to time (in the Council's sole and absolute discretion), the first being within two years after the start of the Surveyors Ombudsman Service and thereafter at intervals of not more than three years. Such reviews will include (without limitation) consideration as to whether there is evidence of complainants seeking to abuse the right to complain in order to evade or delay the payment of money or the performance of any other obligation rightfully owed by them to any Member of the Surveyors Ombudsman Service.

15 Amendment of the terms of reference

- 15.1 The provisions of paragraphs 1, 3, 13 and 15.1 of these Terms of Reference (together with any definitions used within such paragraphs) may only be amended by the Council with the approval of the Surveyors Ombudsman Service Member Board, and after consulting with and taking due account of the views of the Surveyors Ombudsman Service Members and such other bodies as the Council considers appropriate.
- 15.2 All other provisions of these Terms of Reference may only be amended by the Council after consultation with, and taking due account of the views of the Surveyors Ombudsman Service Member Board, the Surveyors Ombudsman Service Members and such other bodies as the Council considers appropriate.