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1.0 Agency

1.1

C instructed the Company to auction two properties. C said that included with the houses was a garage which was not to be included in the auction or if it was the Company would find suitable other accommodation for the cars. The Company arranged for the houses to be cleared without C's permission and that "For Sale" boards were put up despite C's request that this would not occur. C also found the attitude of the Company to be intimidating and the whole experience stressful. The Company refuted C's claims and advised it carried out the instructions to the standards the RICS expects of it.

The Ombudsman found that the Terms of Engagement included sale of the garages and no contractual agreement existed that the Company would find other suitable accommodation for the cars. C instructed their own company to clear the properties so they had not incurred any costs as a result of the Company's quote. There was no evidence the Company had tried to intimidate C. However, the Company had not provided C with details of its Complaint Handling Procedure there had been a delay in responding. The Company was required to apologise and award a gesture of goodwill in recognition of this.

The total cost of the remedy required was between £50 to £100.

1.2

The Client instructed the firm to market the property which was for sale. The Client lived in Australia and was reliant on the Firm to market the property and conduct viewings. The Client complained that the Firm was not conducting viewings. In addition, the client complained that an offer had been incorrectly conveyed as being a cash purchase when it was not. The client acted on this information by taking the property off the market and instructing solicitors to prepare contracts. The sale fell through and the client incurred solicitor's fees. The client also complained about the way the complaint had been handled.

The Ombudsman directed that the Firm should amend its Terms of Engagement to include reference to a Complaints Handling Procedure and to draw up such a procedure.

The Ombudsman further directed that the Firm write a letter of apology for the shortfall in customer service. No financial award was made.

The Ombudsman made a recommendation that any arrangements regarding the marketing of the property are confirmed in writing.

5.0 Building Surveying

5.1

The firm carried a Building Survey at a property C subsequently purchased. When C moved into the property, C discovered damp and repointing which needed to be repaired, and a cold water tank that needed to be replaced, which had not been included within the Report. C complained to the Firm, stating that this should have been picked up in the Report. The Firm did not agree, and refuted the allegations.

The Ombudsman investigated the complaint and it was decided that the Surveyor would not have been able to see the damp and that the repointing was reported. The coldwater tank should however have been spotted. In consequence, the Ombudsman decided it unreasonable to conclude the Surveyor should have reported the damp and repointing any further but should have reported the tank. Several instances of poor customer service were identified. For example, the Firm failed to provide Terms and Conditions, the report was generally poor, poor site notes were retained and resolution of the complaint was difficult. The Firm was therefore required to make a payment to C as a goodwill gesture.

5.2

The Firm undertook a Building Survey at a property C subsequently purchased. Four months after moving in water started to leak through the ceiling. This was caused by a defective roof covering. C wanted the Firm to pay for the cost of replacing the roof. C also complained there was a significant delay in them receiving the Building Survey Report. The Firm stated there was no evidence of water penetration to the ceiling at the time of the inspection.

The Ombudsman found it probable there was no evidence of water leaking through the ceiling at the time of the inspection. The Surveyor had clearly inspected the ceilings and taken damp readings. Furthermore, the location of the leak in the roof had not been located by the roofing company; therefore the Ombudsman could not be sure of the necessity to have the complete roof recovered rather than a localised repair. However, the Surveyor reported staining to the ceiling in an area other than that of the location of the leak but did not recommend to check with the vendor repairs have been undertaken. It was also found that there had been a delay in sending the Building Survey Report and the signed instructions were not received back prior to the report being issued. The Firm was required to award a gesture of goodwill in recognition that the actions C should take were not as clear as they could have been and for the delay in issuing the Building Survey Report.

9.0 Customer service

9.1

C complained that the firm's failure to implement instructions to advise prospective purchasers that there was a fault in a garage roof and that no deduction in the asking price would be considered caused financial loss to C. The firm argued that it was acting in C's best interest in promoting a sale. The investigation found that The Firm had failed to operate as instructed but that this had not caused any financial loss to C. The firm had previously offered a deduction in its fee and this was considered appropriate in the circumstances of this case.

The firm was required to provide a letter of apology for failing to carry out C's instructions or seeking to make it clear that it considered such action would have a negative impact on any prospective sale and seeking further instructions accordingly.

14.0 Dry Rot

14.1

C had a Building Survey completed by the firm. C moved into their property and discovered dry rot, but there had been no mention of this in the Report. The firm explained the area where dry rot had been discovered was covered by furniture and floor coverings; therefore it could not inspect the area. The firm commented that it made several recommendations in the Report, which C should have obtained quotes for prior to purchase but they did not do this.

The Ombudsman was of the opinion that the area where dry rot had been discovered was inaccessible during the initial inspection. The Ombudsman noted the recommendations made by the firm. The Ombudsman considered that if C had followed these recommendations prior to purchase then the dry rot could have been identified at that point and C would then have had the opportunity to renegotiate on price. The Ombudsman required the firm to take no further action.

18.0 Homebuyers Survey/Valuation

18.1

The firm carried a Homebuyers Survey and Valuation at a property C subsequently purchased. When C moved into the property, C discovered that damp at the property. C complained to the Firm, stating that this should have been picked up in the Homebuyers report. The Firm did not agree, and refuted the allegations. It pointed out that the area of damp was hidden and was not evident at the time when damp readings were taken.

The Ombudsman decided that the Surveyor would not have been able to take damp meter readings in the appropriate place because furniture was in the way. It was also established that there would not have been any visible signs of damp at the time of the original inspection. In consequence, the Ombudsman decided it unreasonable to conclude the Surveyor should have reported the damp. Some instances of poor customer service were identified. For example, the Firm failed to return call back requests and C was given incorrect information about the time of the inspection. The Firm was therefore required to make a payment to C as a goodwill gesture.

18.2

The firm carried a Homebuyers Survey and Valuation at a property C subsequently purchased. When C moved into the property, C discovered defects with the brickwork of the gable walls. C complained to the firm, stating that this should have been picked up in the Homebuyers report. The firm accepted some responsibility but has not been able to agree a resolution by way of settlement with C.

The Ombudsman decided that the surveyor should have reported the defect but was not satisfied that the cost of quote claimed was suitable and was in fact too high. The full amount of the quote would not therefore be awarded as no competitive quotes had been obtained and that there was an element of betterment which needed to be taken into account.

In consequence, the Ombudsman decided it reasonable to conclude the surveyor should have reported the brickwork. The firm was therefore required to make a payment to C as a goodwill gesture.

18.3

C instructed the Firm to conduct a Homebuyer Survey and Valuation. On the strength of the report issued, C purchased the property. After moving into the property, C noticed ingress of water in the upstairs of the property. C stated that the Firm did not comment on this when carrying out the Homebuyers Survey and Valuation. In addition, there was a dangerous manhole cover situated near the front door. Again, this was not commented upon. The Firm advised that the ingress of water may have been caused by severe weather affecting the area after the inspection was carried out. In any event, the Firm was not given the opportunity to reinspect the property prior to work being carried out. In relation to the manhole cover, the firm commented that this was not located at the time of inspection and may have been concealed.

The Ombudsman directed that the Firm should take no further action.

18.4

The firm carried a Homebuyers Survey and Valuation at a property C subsequently purchased. When C moved into the property, C discovered that the immersion tank was in poor condition and there was a damp patch in the ceiling which was not reported. C

complained to the firm, stating that this should have been picked up in the Homebuyers report. The firm did not agree, pointing out that the immersion tank was not seen and therefore not reported and the damp was not evident and could not have been noticed at the time of the inspection.

The Ombudsman decided that the surveyor would not have been able to notice the damp and would not have been obliged to take damp meter readings in ceiling. It was also established that there would not have been any visible signs of damp at the time of the original inspection. The Ombudsman also concluded that the immersion tank was not inspected and C was advised of this within the report. In consequence, the Ombudsman decided it unreasonable to conclude the surveyor should have reported the damp. In light of this review and all the evidence provide the Ombudsman requires no further action from the firm.

The ombudsman formally recommended that the firm:

- ensures that its Complaints Handling Procedure complies with the RICS guidance
- ensures that it issues its Complaints Handling Procedure upon receipt of a complaint
- responds to customer complaints in accordance with the Complaints Handling Procedure in terms of both content of a response and the timescales set out in that Procedure
- retains site notes of damp meter readings which have been taken, showing on a plan where readings have been taken and should indicate where any high readings have been found
- takes and keeps photographic evidence of the state of the property upon inspection and re-inspection

18.5

C advised that they requested a Firm to carry out a Scheme 2 type survey. C complained after moving into the property it was discovered that the under floor was damp and the roof was such that it rendered one room uninhabitable. C requested the costs of a replacement damp proof course and the replacement roof works be paid for by the Firm. C also complained of the way in which their complaint had been dealt with. The Firm stated that the damp problems were not visible and could not have been identified visually and that the roof was acceptable, and even if it was not, this would not have affected the market value.

The Ombudsman found that on the day of the initial inspection the damp could not have been identified as it was covered by flooring and was only noticed during destructive tests which had been carried out since moving into the house. However, it was found that the surveyor should have noticed the unusual roof and suggested that further investigations be carried out.

The Firm was required to award a gesture of goodwill in recognition of this and any inconvenience cause.

18.6

C says that firm undertook a Homebuyer Survey and Valuation for a property, which C was considering the purchase of. The survey report referred to an external studio as satisfactory and because of the firm's findings C decided to go ahead with the purchase.

C says that it became apparent that the studio was flawed in that pitch of the roof did not meet Building Regulations. This has resulted in damp problems. The survey report did not mention this and C feels that if it had, C would have been able to negotiate the purchase price with the vendor (something that C successfully did based on other items identified in the report).

C began complaining to the firm.

The Ombudsman concluded that the surveyor could have been clearer in setting out the limitations of the report, but ultimately the building was an outbuilding and that the surveyor was not obliged to report on Building regulations in accordance with the terms and conditions.

In light of this review and all the evidence provided, the Ombudsman recommended the firm pay to C a sum by way of gesture of goodwill in recognition of the shortfall in customer service.

18.7

The firm carried a Homebuyers Survey and Valuation at a property C subsequently purchased. When C moved into the property, C discovered that one of the windows was so rotten it required a full replacement. C complained to the firm, stating that this should have been picked up in the Homebuyers report. The firm did not agree, pointing out that the surveyor has reported that there was some element of rot to the window and that it had worsened since the report. The firm also stated that the extent of the problem with window was not evident at the time of the survey.

The Ombudsman examined photographs of the property and the extent of the damage. It was decided that the surveyor would not have been able to see the extent of the problem which was concealed with paint and was only exposed when the paint was stripped down to the timber. Furthermore, the rot had only been found several months after the inspection had taken place. In consequence, the Ombudsman decided it unreasonable to conclude the surveyor should have reported the fact that the window required replacement and had sufficiently reported the rot within the window.

The Ombudsman required no further action from the firm.

18.8

The firm carried a Homebuyers Survey and Valuation at a property C subsequently purchased. When C moved into the property, C discovered that the majority of the walls in the property were suffering from penetrating damp. C complained to the firm, stating

that this should have been picked up in the Homebuyers report. The firm did not agree, pointing out that there did not appear to be any visible signs of the damp at the time the inspection was carried out.

The Ombudsman reviewed all the supporting evidence provided by the parties including specialist damp reports highlighting the causes of the penetrating damp which including the incorrect use of the dot and dab plastering method. It was decided that there did not appear to be any visible signs of the damp at the time the survey was carried out and no positive damp meters were obtained. However, it was noted that the property had been newly renovated and that C had paid a premium for this. Therefore, the Ombudsman concluded that the surveyor should have spotted that the dot and dab plastering system had been used and that this was inappropriate when renovating period properties. Had this been commented upon in the report, it was decided that C may have been able to negotiate a reduction in price. Some instances of poor customer service were also identified along with some comments in relation to the damp proof course that the Ombudsman did not feel were accurate. For example, the firm failed to provide C with call backs that had been promised and the surveyor advised that the property was likely to have a bitumen damp proof when given the age of the property this was unlikely. The firm was therefore required to make a payment to C as a goodwill gesture and provide C with an apology.

18.9

C commissioned the firm to carry out a Homebuyers Survey & Valuation on a property, which was subsequently purchased. After moving into the property, a few months later, several defects were found. C feels a negotiated purchase price could have been arranged had the defects been mentioned on the survey. The main defect was the roof, which the Freeholder is now having replaced, passing on the charge of this to the residents. C has completed the firm's Complaint Handling Procedure in an attempt to resolve her complaint.

In light of this review and all the evidence provided propose that the Ombudsman requires the firm to pay to C a sum by way of contribution towards the reversion of the saniflow toilet to mains, in recognition of the shortfall in customer service.

33.0 Party wall disputes

33.1

The Firm was commissioned by C to carry out an inspection of a damaged wall that C believed was a party wall. The Firm produced a Report and concluded that on the balance of probabilities the wall was a party wall and suggested action to proceed. The Firm was then required to carry out further inspections to assess the damage to the wall and remedial action needed. During the first inspection the wall was only inspected from C side, after a time lapse a further inspection from the neighbours side lead to the Firm altering its opinion on the status of the wall. C was unhappy with the Firm's opinion and

raised a complaint. The Firm stated that it has acted inline with its instructions and the evidence available at the time.

The Ombudsman noted that the Firm's actions could be investigated to ensure that it can provided the service that it said it would and to assess whether C had experienced any shortfalls in customer service. The Ombudsman could not review the Firm's opinion on whether the wall was a party wall as this is outside the Ombudsman remit. The Ombudsman concluded that the Firm had acted appropriately inline with its instructions and the evidence available at the time. However, it was noted that C had experienced a number of delays and the Firm had provided C with incorrect information in relation to the correct Complaints Handling Procedure. In recognition of the delays and shortfall in customer service, the Firm was required to make a payment to C as a goodwill gesture and provide an apology.

51.0 Valuations

51.1

The Client instructed the firm to undertake a mortgage valuation. On the strength of the content of the report, C purchased the property. It transpired that a number of alterations had been made to the building that did not have Building Regulation consent. The Mortgage Valuation made no reference to these defects. The firm maintained that the defects were outside of the scope of a mortgage valuation report. C also complained that the relationship between the surveyor and seller was not disclosed.

The Ombudsman directed that the Firm should write a letter of apology for the shortfall in customer service and make a goodwill payment. The Ombudsman made a recommendation that the Firm disclose any conflict of interest.