

Terms of Reference

Property Agents and Property Professionals



**The Property Redress Scheme is a government authorised
Consumer Redress Scheme for Lettings, Property Management
and Estate Agents and other Property Professionals**

Authorised By



Department for
Communities and
Local Government

Introduction

The Property Redress Scheme (“PRS”) is a government authorised consumer redress scheme that offers an escalated complaints process to customers of Members of the Property Redress Scheme. The redress is offered in relation to complaints caused by the acts or omissions of the Member.

The Property Redress Scheme is a trading name of HF Resolution Ltd. The Property Redress Scheme has three distinct parts to its structure:

1. Executive Board
2. Advisory Council
3. Office of Ombudsman and Head of Redress

These Terms of Reference set out how the Property Redress Scheme works, the basis upon which Members join and the approach of the Property Redress Scheme to resolving complaints.

Purpose

1. The main purposes of the Property Redress Scheme are:
 - a. Allow Agents and Property Professionals to either comply with their legal responsibility to join an approved consumer redress scheme or to join to add value to their business
 - b. To resolve or settle unresolved complaints made, relating to acts or omissions of a Member after the complainant has already exhausted the Member’s internal complaints procedure
 - c. Where appropriate, make an award as a result of any financial loss, or unnecessary aggravation, distress and/or inconvenience caused by the Member
 - d. To actively assist in and contribute to raising standards in the industry by highlighting best practice and promoting it, and by identifying bad practice and helping to eliminate it.

Accountability

2. The Property Redress Scheme Head of Redress is responsible for the actions and decision making of the Property Redress Scheme (from case assessors and Ombudsmen). The Head of Address is accountable to the Property Redress Scheme Board but is not a member of the Board. The Head of Redress is thus independent and impartial from the executive responsibilities of running the Property Redress Scheme.
3. The Property Redress Scheme also has an Advisory Council (“the Council”). The Council both advises and scrutinises the running of the Property Redress Scheme. The Council includes representatives from the property industry, including consumer representation and has an independent Chair. The Head of Redress will also sit on the Council.

The Head of Redress

4. The Head of Redress is responsible for the decision making of the Property Redress Scheme among other responsibilities including representing the Property Redress Scheme to the industry, and completing the annual report.

5. When the Head of Redress makes any decisions on complaints he does so as an Ombudsman. Where the word Head of Redress is used in relation to decision making it may also mean a Deputy Ombudsman.
6. The Head of Redress will use the principles and practices in these terms of reference as the broad basis for assessing any offer of redress made to the complainant by a Member.
7. The Head of Redress will consider any terms of business agreed by the parties, all relevant statutory provisions related to the complaint and where appropriate a Code of Practice (“CoP”) the Member has agreed to abide by.
8. In making a decision, the Head of Redress will:
 - a. Proceed fairly and in accordance with the principles of natural justice.
 - b. 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. Make his decision based on any relevant CoP, terms and conditions agreed by the parties, the law (including consumer law) and also what is fair just and equitable in the circumstances of the specific case in question.
 - d. The burden of proof for any decision made will be on the ‘balance of probabilities’.
 - e. No one decision will set a precedent for another decision although the Head of Redress will follow a consistent approach to issues.
 - f. Have the power to request the parties attend at a face to face hearing if he feels that is the best way to resolve the complaint.

Membership

9. Members of the Property Redress Scheme are required to:
 - a. Agree to abide by these Terms of Reference including the relevant Appendix
 - b. Complete and submit/sign an Application of Membership and pay all relevant Subscriptions fees
 - c. Pay all complaint, renewal and penalty fees as directed by the Property Redress Scheme
 - d. If an Agent, hold Professional Indemnity Insurance
 - e. Provide a copy of their internal complaints procedure to all consumers (if they have one)
 - f. Provide information about the Property Redress Scheme to all consumers when signing any agreement and at the point any formal complaint is received
 - g. Display a Property Redress Scheme window sticker in all offices (where possible)
 - h. Display the Property Redress Scheme logo and link on their website (where possible)

Subscriptions

10. The Property Redress Scheme membership options:

- Option 1 Entry Model - Low annual subscription fee plus reasonable complaints fees.
 - Option 2 Enhanced Model - One annual fee for head office and each of the branches, with no individual complaints fees (subject to the Property Redress Scheme's fair usage policy*)
- a. Whichever membership subscription the Member chooses will cover all the work the Member undertakes e.g. an Agent who undertakes Estate and Lettings Agency work can join for same fee, there are not separate fees for the different types of work.
 - b. The Member must however inform the Property Redress Scheme of the type of work undertaken at the Head Office and any branches.
 - c. The Property Redress Scheme operates an auto renewal process including payment from the Member's recent debit or credit card. This process can be de-activated by the Member.
 - d. For Members on the Entry Model any Complaint Fees due will be taken automatically from the Member's registered debit or credit card.

11. Fair usage policy

This means that the Property Redress Scheme may move the Member from the Enhanced model to the Compliance model if in the reasonable opinion of the Property Redress Scheme the number or types of complaints made against the Member, in relation to the size and work they carry out is excessive. This will mean the Member is required to pay the standard rate for any future complaints at the Compliance rate for the rest of that subscription period. Renewal terms may not then be offered to the Member on the Enhanced model.

The Property Redress Scheme will only enforce the fair usage policy after:

- a. Attempting to discuss the matter with the Member; and
- b. Sending a formal written notification to the Member, outlining the reasons why the Property Redress Scheme believe that the number of complaints made against the Member is excessive and unsatisfactory action has been taken by the Member to rectify the issues.

Grounds of Complaint

12. The grounds of any complaint must be that in relation to the act or omission of the Member, and fall under the following criteria:

- a. A breach of the Member's obligations under the law;
- b. Where legal rights have been impinged or breached;
- c. Where a Member has not acted in accordance with a CoP it has signed up to, or any internal rules, procedures or statements of practice;
- d. Unfair treatment of the complainant by the Member; including, but not limited to:
 - i. rudeness or discourtesy
 - ii. not explaining matters
 - iii. poor or incompetent service
 - iv. avoidable delays

- e. Where a Member has not administered a transaction as efficiently as would be expected.
13. In all cases, the complainant must try to resolve the matter with the Member first.

General Conditions for Acceptance of Complaint

14. The complainant must use a Property Redress Scheme advertised method of submitting a complaint (online, paper form or by telephone).
15. The Property Redress Scheme shall only consider, or continue to consider, a complaint if it is satisfied that:
- a. the complainant has grounds for complaint as above in paragraph 12.
 - b. the complaint is made against a Member of the Property Redress Scheme.
 - c. the complainant has tried to resolve the matter with the Member, waited 8 (eight) weeks for a response to the written complaint, but the Member has not responded, or the complainant remains dissatisfied with the outcome or the conditions of the response including any full and final settlement offered.
 - d. the complaint is made within 6 months of the last correspondence received from the Member.

Non Acceptance of a Complaint

15. The Property Redress Scheme shall not investigate a complaint (or any part of a complaint), or shall discontinue the investigation of a complaint (or any part), if:
- a. at any time it appears to the Property Redress Scheme that it is more appropriate for the complaint to be dealt with by a Court or under another independent complaints, conciliation or arbitration procedure such as a tenancy deposit protection scheme;
 - b. at any time that the Property Redress Scheme finds out that the complaint is already being or has been considered by a Court, or under another independent complaints, conciliation or arbitration procedure, he should discontinue his investigation. If that other body is not considering all aspects of the complaint or if that body is not designed to offer financial compensation to the Complainant, the Ombudsman may then resume his consideration of the complaint;
 - c. in the Property Redress Scheme's opinion the complaint does not have a reasonable prospect of success or is considered to be frivolous or vexatious. The Property Redress Scheme will provide full written reasons if relying on this clause.

Confidentiality

16. The Property Redress Scheme may use any information freely provided to him by a complainant or an Member in its consideration of a complaint provided it is for the express purpose of dealing with that complaint.
17. The Property Redress Scheme may refuse to disclose information to either the complainant or the Member if:
- a. in its reasonable opinion, it is not relevant to the consideration of the complaint;

- b. in its reasonable opinion and in all the circumstances of the complaint, it is inappropriate, or unlawful;
 - c. it concerns issues of national security or the personal security of the complainant, or Member or third party;
 - d. it is protected by legal or professional privilege (and such privilege has not been waived);
18. The Property Redress Scheme shall always consider any specific requests for disclosure received from a party.
19. The Property Redress Scheme will act in accordance with all data protection legislation and shall take all reasonable steps to ensure that all Property Redress Scheme staff keeps confidential any information provided as part of the investigation of a complaint, whether or not it is disclosed to the other party.

Resolution of Complaints

20. On receipt of a complaint the Case Assessor will:
- a. check that the complainant has grounds for complaint.
 - b. if so, inform the Member of the complaint and allow them 10 working days to amicably resolve the complaint directly with the complainant.
 - c. assist the parties to seek to achieve a mutually acceptable settlement of a complaint within those 10 working days.
21. If a mutual agreement is made within the 10 working days the Property Redress Scheme will request confirmation that the complainant is satisfied with the resolution.
22. If the matter is not resolved within the first 10 working days then the Case Assessor will:
- a. provide some further time if in the reasonable opinion of the Case Assessor this will assist the parties to come to a resolution.
 - b. prepare a resolution plan if the Case Assessor believes the parties cannot resolve the matter between themselves. On preparation of a resolution plan the Member will be required to pay the advertised complaint fee to the Property Redress Scheme.
 - c. generally the resolution plan will set out the evidence gathering process which should take no longer than 20 working days;
 - d. communicate the resolution plan to all parties.
 - e. oversee the gathering of evidence and continue to assist the parties in trying to come to a resolution. This may include giving the parties an indication of the result of the matter if dealt with by an Ombudsman to allow the parties to come to an earlier resolution.
 - f. if no resolution has been achieved by the end of the evidence gathering process, pass the file to the Head of Redress.

Evidence Requirements

23. Once the file has been passed to the Head of Redress he will generally make a decision based on the evidence provided to that point.
24. The Head of Redress may be required to clarify evidence but will not request any further evidence unless he feels it would be contrary to natural justice not to do so.
25. If the Head of Redress makes a request to a party for information or evidence and they do not respond within the period set out by the Head of Redress then he will not be compelled to consider any information or evidence provided late.

The Head of Redress' Final Decision

26. On delivery of the decision, the complainant will have 15 working days to tell the Property Redress Scheme whether they accept the decision.
27. If the Property Redress Scheme does not hear from the complainant after 15 working days we will assume they do not agree with the decision. We may accept a late notification if the complainant can give sufficient reason for not responding to us within the notified time sale.
28. If the complainant does not agree with the decision they still have the option of taking the Member to court to recover any losses they believe they have suffered.
29. If the complainant informs us they do not agree with the decision then we will inform the Member.
30. Upon notification that the complainant agrees with the decision, the Member must comply with the conditions set out in the decision within 10 working days.

Awards

31. In settlement of the complaint, the Ombudsman may make an award against the Member and to the complainant consisting of one or more of the following:
 - a. an apology
 - b. an explanation
 - c. practical action to mitigate any detriment
 - d. reimbursement of actual loss and/or costs incurred
 - e. a payment in recognition of time and trouble taken to make the complaint
 - f. a payment, where appropriate, for distress
 - g. other appropriate action suggested by the complainant or decided by the Ombudsman
32. Any compensation payment will be calculated based on demonstrable loss or costs and will take into account any degree to which the complainant has contributed to the failure or loss suffered.
33. The maximum monetary compensation payment the Property Redress Scheme can award against a Member and to a complainant is £25,000.00.

Interest Payments

34. The inclusion of an interest calculation may be considered where, for example, a specific sum of money owed to the complainant was not paid at the proper time.
35. The interest rate used by the scheme Ombudsman is the rate used by the County Court. Interest will start from the point where the complainant spent the money or did not receive money due, and will be applied until the date on which payment is made.

Time and Trouble

36. A time and trouble payment is distinct from payments for actual losses or costs. It covers the time and trouble reasonably and legitimately expended by the complainant in having to pursue the complaint with the member and with the Ombudsman.

Non-Compliance of the Decision

37. If a Member fails to comply with the conditions set out in an agreed decision within 10 working days, then on confirmation that the decision has not been complied with, the Property Redress Scheme will issue the Member with a fixed penalty fee (as advertised from time to time) payable to the Property Redress Scheme.
38. If the Member pays the fee and complies with the decision within a further 5 working days then no further action will be taken.
39. If the Member does not pay the penalty and continues not to comply with the decision then the person or business will have his membership of the Property Redress Scheme suspended pending investigation by the Head of Redress. During this period the Property Redress Scheme will still hear and deal with any complaints against the member.
40. After investigation (generally 10 working days) the Head of Redress will then make a recommendation to the Property Redress Scheme Board as to whether the person or business should have its membership terminated. If that is the decision and the board approve the recommendation the person or business will be informed of the decision and what its options are.
41. After that point the person or business will only be able to re-join the Scheme if it pays the fine, complies with the decision. The person or business will also be required to pay a further membership fee (which will be double the standard amount for its class). If the person or business does not comply with the requirements set out in paragraph 39, the Property Redress Scheme will be required to publicise the expulsion the person or business to the relevant body.

Complaints Concerning the Scheme

42. HFIS PLC will provide the Property Redress Scheme with an independent complaints officer. This person will be independent from any teams or processes of the Property Redress Scheme.
43. Complaints will be dealt with by this person who would investigate and depending on the nature of the complaint respond within a reasonable period of time in a proportional way to the complaint.
44. The majority of complaints will be dealt with within 5 working days. If the complaints office expects it to take longer they will contact the parties and explain why.
45. Complaints can only be made about the process or service provided by the Property Redress Scheme

46. The complaints procedure cannot be used if a party is unhappy with a decision of an Ombudsman.

Provision of Information by the Scheme Administrator

47. Information will be provided to:

- a. persons exercising functions under other approved redress schemes;
- b. any other person exercising regulatory functions in relation to approved redress schemes.

48. The Property Redress Scheme will enter into memoranda of understandings with the other government approved redress schemes to cover exchange of information and common approach to decision making.

49. The main information that will be required to be shared will be in relation to Member's who have had their membership of any of the schemes cancelled. The aim is for the redress schemes to address complaints received in a consistent manner in the same way the tenancy deposit protection schemes address disputes over the return of the deposit.

50. If a regulatory or enforcement body requests any information from the Property Redress Scheme then this information will be provided in a timely manner as requested.

Annual Report

51. The Head of Redress will be responsible for producing the Property Redress Scheme's annual report. This report will set out the activities of the Property Redress Scheme, Member numbers and sectors, number of complaints received, number rejected, number referred back to the Member, number requiring mediation and number requiring a decision. Figures will be released on the types of complaint and the results of the Property Redress Scheme's decisions. The Property Redress Scheme's financial position will also be published

Best Practice

52. In order to ensure that best practice standards are achieved within the industry, the Property Redress Scheme will publicise:

- a. Property Redress Scheme's legal constitution, governance, and funding arrangements
- b. The types of dispute which may be referred to the Property Redress Scheme
- c. The rules governing the referral of matters to the Property Redress Scheme
- d. The decision-making arrangements
- e. The rules serving as a basis for decisions
- f. The level and applicability of the awards
- g. The provision for securing expert advice to assist with an investigation
- h. The jurisdiction, powers and method of appointment of any Ombudsman.

53. The Property Redress Scheme will:
- a. Publicise all decisions made by an Ombudsman (removing personal data)
 - b. Provide case studies on regularly occurring topics so complainants and Members can view how decisions are made
 - c. Provide guidance on the types of evidence that are considered by the Property Redress Scheme and how best to set out a complaint or response
 - d. Notify in writing or by telephone all parties of any action taken by the Property Redress Scheme in relation to a complaint
 - e. Provide help and guidance to complainants and Members to they understand any Property Redress Scheme process or fill out any Property Redress Scheme form. This includes membership and complaints processes. The assistance will be by telephone and email
 - f. Make the processes themselves clear, transparent, and easy to access by all without the need for specialist representation. All parties to a complaint can use third party representation if they so wish providing the Property Redress Scheme are provided with a satisfactory authority for that person to act
 - g. Consider the needs of disadvantaged and vulnerable people and make the timescales flexible if the complainant can show they have a valid reason to require more time
 - h. Require all members to display a window sticker on their trading premises, provide a leaflet explaining the way the Property Redress Scheme works to all buyers and sellers and also provide a link to the Property Redress Scheme website on their own website
 - i. Include on its website a public search facility so consumers can check whether the person or business is a member
 - j. Have clear and easy to understand rules relating to the types of complaint that will be accepted under the Property Redress Scheme and the complaints process
 - k. Have a clear and transparent process for Members to complain about how the Property Redress Scheme has administered any process (but not against a decision)
 - l. Complainants will not be charged anything for making a complaint.

Appendix 1 – Terms of Reference for Lettings and Property Management Agents

The Property Redress Scheme offers a consumer redress scheme authorised by the Department for Communities and Local Government (“DCLG”) to offer redress to customers of Lettings and Property Management Agents under the Redress Schemes for Lettings Agency Work and Property Management Work (Approval and Designation of Schemes) (England) Order 2013 (“the Order”).

An Agent who joins the Property Redress Scheme can comply with all the legal requirements to join a consumer redress scheme. The Agent will be given the opportunity to tell the Property Redress Scheme the type of work they undertake. There is only one fee which covers all work undertaken

The following definitions apply to Agents who are required to join a consumer redress scheme under the Order:

“Lettings Agency Work” means: things done by any person in the course of a business in response to instructions received from—

- (a) a person seeking to find another person wishing to rent a dwelling-house in England under a domestic tenancy and, having found such a person, to grant such a tenancy (“a prospective landlord”);
- (b) a person seeking to find a dwelling-house in England to rent under a domestic tenancy and, having found such a dwelling-house, to obtain such a tenancy of it (“a prospective tenant”).

“Property Management Work” means things done by any person (“A”) in the course of a business in response to instructions received from another person (“C”) where—

- (a) C wishes A to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on C’s behalf, and
- (b) the premises consist of or include a dwelling-house let under a relevant tenancy.

“Complainant” is defined as a consumer of services provided by Agents undertaking Lettings Agency Work or Property Management Work.

“Complaint” is defined as an event as outlined in paragraph 12 of the Terms of Reference.

Appendix 2 – Terms of Reference for Estate Agents

The Property Redress Scheme offers a redress scheme authorised by the National Trading Standards Estate Agency Team at Powys County Council (“Powys”) to offer redress to customers of Estate Agents throughout the United Kingdom under the Consumers, Estate Agents and Redress Act 2007 (“CEARA”).

The following definitions apply to Agents who are required to join a consumer redress scheme under CEARA:

“Estate Agency Work” is defined as:

Things done by any person in the course of a business (including a business in which he is employed) pursuant to instructions received from another person (in this section referred to as “the client”) who wishes to dispose of or acquire an interest in land—

(a)for the purpose of, or with a view to, effecting the introduction to the client of a third person who wishes to acquire or, as the case may be, dispose of such an interest; and

(b)after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or, as the case may be, the acquisition of that interest;

“Complainant” is defined as a consumer of services provided by Agents undertaking Estate Agency Work namely:

a “seller”, in relation to residential property, means a person who claims that he is or may become interested in disposing of an interest in land in respect of that property (and includes a person who disposes of such an interest);

a “buyer”, in relation to residential property, means a person who claims that he is or may become interested in acquiring an interest in land in respect of that property (and includes a person who acquires such an interest).

“Complaint” is defined as an event as outlined in paragraph 12 of the Terms of Reference.

Appendix 3 – Terms of Reference for other Property Professionals

The Property Redress Scheme is a consumer redress scheme offering redress to consumers of products offered by property professional members of the Property Redress Scheme.

The Property Redress Scheme offers redress to the following Property Professionals:

Cleaner means a cleaner person or business who is a member of the Property Redress Scheme

Gardener means a Gardener person or business who is a member of the Property Redress Scheme.

Handyman means a Handyman person or business who is a member of the Property Redress Scheme.

Inventory Provider is defined as person or persons representing the Company completing any instruction to complete an inspection and its corresponding report as received by the Company from the Agent

Painter/Decorator means a person or business who is a member of the Property Redress Scheme.

Tenant Referencing means a Tenant Referencing person or business who is a member of the Property Redress Scheme.

“Complainant” is defined as a consumer of services provided by a Property Professional who is a Member of the Property Redress Scheme.

“Complaint” is defined as an event as outlined in paragraph 12 of the Terms of Reference.

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