

Terms of Reference

*3rd Edition valid from
1st June 2018*

PRS Property
Redress
Scheme



Property Agents and
Property Professionals

Section A: Introduction to the Property Redress Scheme

1. Introduction

- 1.1 The Property Redress Scheme (“PRS”) is a government authorised consumer redress scheme that offers an escalated complaints process to consumers of Members of the PRS. The redress is offered in relation to complaints caused by the acts or omissions of the Member.
- 1.2 The PRS is a trading name of HF Resolution Ltd. The PRS has three distinct parts to its structure:
 - Executive Board and operations
 - Office of the Head of Redress
 - Advisory Panel
- 1.3 These Terms of Reference set out how the PRS works, the basis upon which Members join and how the operation of the scheme relates to how the PRS resolves complaints. These Terms of Reference should be read in conjunction with the **PRS Conditions of Complaints**.

2. Purpose

- 2.1 The main purposes of the PRS are to:
 - a. Allow Property Agents and Professionals to comply with their legal responsibility to join an approved consumer redress scheme and to add value to their business;
 - b. 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. Actively assist in and contribute to raising standards in the industry by highlighting and promoting best practice and by identifying bad practice and helping to eliminate it;
 - e. Decide upon complaints on the basis of what the PRS believes is fair and reasonable in each case.
- 2.2 The PRS complaints service is an alternative and more informal method of resolution than using the courts. The PRS is not a regulator and does not have the authority to take regulatory or legal action against a Member.

3. The Head of Redress & Accountability

- 3.1 The Head of Redress is:
 - 3.1.1 Accountable to the PRS Executive Board (“the Board”) but is not a member of the Board.
 - 3.1.2 Independent and impartial from the executive responsibilities of running the PRS.
 - 3.1.3 Responsible for representing the PRS to the property industry.
 - 3.1.4 Responsible for all decision making made by the PRS. When the PRS makes any decision on a complaint, it has been done so under the jurisdiction of the Head of Redress.
- 3.2 The PRS also has an Advisory Council (“the Council”). The Council both advises and scrutinises the running of the PRS. The Council includes representatives from the property industry, including consumer representation and has an independent Chair. The Head of Redress sits on the Council.

Section B: Membership

4. Membership Requirements

As a Member of the PRS you are required to:

- a. Agree to abide by these Terms of Reference including the Membership Obligations set out in the relevant Appendix;
- b. Complete and submit/sign an Application of Membership;
- c. Disclose all information requested for membership. In the event of non-disclosure or misrepresentation the PRS reserves the right to terminate the membership;
- d. Pay all joining, renewal, complaint and penalty fees in the timescale as directed by the PRS;
- e. Provide a copy of their internal complaints procedure to all consumers (the PRS provides a model complaints procedure Members should adopt if they do not have one);
- f. Provide information about the PRS to all consumers when signing any agreement and at the point any formal complaint is received;
- g. Display a PRS window sticker in all offices;
- h. Display the PRS logo and link on their website;
- i. Comply and keep up to date with all relevant legislation;
- j. Keep all contact details up to date and inform the PRS promptly of any changes;
- k. Respond to all PRS communication as required.



Section B: Membership continued

5. Membership Options

5.1 The PRS Membership options:

Option 1 - Enhanced Model - Annual fee for head office and additional annual fee per branch with no individual complaint fees (subject to the PRS fair usage policy) and access to the legal advice helpline.

Option 2 - Entry Model - Low annual subscription fee for head office and additional annual fee per branch plus additional complaint fees (if Proposed Decision required).

Option 3 – Residential Leasehold Block Managing Agents – Low annual fee per company then additional complaint fee (if Proposed Decision required).

5.2 Fair usage policy

5.2.1 If the number of complaints made against a Member exceeds five in any 12 month period, the PRS reserves the right to move the Member from the Enhanced Model to the Entry Model.

5.2.2 This will mean that the Member is required to pay the standard complaint rate for any future complaints at the Entry Model fee for the rest of that subscription period. Renewal terms may not then be offered to the Member on the Enhanced Model.

5.2.3 The PRS will only enforce the fair usage policy after:

- a. Discussing the matter with the Member; and
- b. Sending formal written notification to the Member that the number of complaints made against the Member is excessive for the Enhanced Model.

5.3 The Membership and Complaint fees for the three membership options will be publicised on the PRS website and may be changed from time to time. A Member will be given a month's notice of any change in either Membership or Complaint fees and if a Member wishes to join another redress scheme due to a change in a fee then the PRS will offer a pro rata refund of any Membership fees up to their renewal date.



6. Membership Subscriptions

- 6.1 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 the same fee, there are no separate fees for the different types of work.
- 6.2 The Member must, however, inform the PRS of the type of work undertaken at the Head Office and any branches and satisfy us that they comply with any additional legal requirements associated with this type of work.
- 6.3 If the Member is undertaking residential leasehold block management work then we would expect them to join on Option 3. If this type of work is less than 20% of their overall work then they can join on Option 1 or Option 2 but if they have a complaint about their residential leasehold block management work this complaint will be chargeable at the advertised Option 3 complaint rate.
- 6.4 The PRS operates an auto renewal process which includes taking payment from the Member's most recent debit or credit card. This process can be de-activated by the member.
- 6.5 For Members on the Entry Model, any Complaint Fees due may be taken automatically from the Member's registered debit or credit card.
- 6.6 Other branches:
- i. The Member must register and pay for all actively trading branches (other offices) associated with the company with the PRS.
 - ii. The Head Office and all branches must be on the same Membership Model.
 - iii. If the Member informs the PRS that they have opened a new branch during their subscription period then the PRS will charge a pro rata fee to cover the rest of the subscription period.
 - iv. If the PRS discovers that the Member has a branch that is not registered, the PRS will investigate why the branch was not registered. Generally the PRS will invoice for the discovered branch from the beginning of the Member's subscription period. Failure by the Member to pay the invoice may result in cancellation of the Member's PRS Membership.
- 6.7 If the applicant is running an entirely web based business, they must register a "head office" being a servable UK address. Their level of subscription and whether they are required to register any branches will be based on the business model that they operate and the PRS reserves the right to make a final decision on an individual basis.

7. Membership Cancellation/Expiry

- 7.1 If a Member opts to cancel their Membership they will need to put the request in writing to info@theprs.co.uk together with the cancellation reasons.
- 7.2 On Membership cancellation or expiry, the PRS may be required to inform trading standards along with the other redress schemes in line with our responsibilities and Memorandum of Understanding.
- 7.3 Refunds
- 7.3.1 No refund will be due to the Member if they cancel their Membership within the subscription period or if the PRS is required to cancel the Member's Membership.
 - 7.3.2 A new Member who joins the PRS but found to have been banned from another scheme, may not be entitled to full refund of membership fee. This will be at the discretion of the PRS.

Section B: Membership continued

8. Disciplinary

- 8.1 The PRS Compliance Officer will be required to investigate a Member's conduct in the following circumstances:
- The Member does not pay any PRS fees when due;
 - The Member does not comply with a PRS decision as directed;
 - The Member breaches any of the PRS Terms of Reference;
 - The Member regularly frustrates the process in relation to the compliance of a PRS decision;
 - It is alleged the Member acts or has acted in a way to bring the PRS into disrepute;
 - Trading Standards or government body or organisation asks the PRS to investigate the Member's conduct;
 - Any other reasonable reason.
- 8.2 After conducting the investigation the Compliance Officer will then make a recommendation to the PRS Head of Redress and Managing Director as to whether the Member has their Membership cancelled.
- 8.3 If the Head of Redress and Managing Director agree to the Member having their Membership cancelled then the Member will be informed and provided with the reasons for the cancellation.
- 8.4 If the PRS expels a Member then the PRS will be required to inform the other government authorised consumer redress schemes, Trading Standards, local authority and any trade association that the Member has joined. The PRS also reserves the right to name that Member on a public list of expelled Members and issue a press release relating to the expulsion.
- 8.5 The PRS is entitled to issue a penalty fee if a Member does not comply with a PRS decision. If the Membership is cancelled due to the Member not complying with a PRS decision the Member will be required to comply with the decision and pay the penalty fee issued before being able to join another consumer redress scheme or re-join the PRS. To re-join the PRS the person or business will also be required to pay a further Membership fee (which will be double the standard amount for its class).

Section C: Scheme Matters

9. Complaints Concerning the Scheme

- 9.1 If a Member or Complainant wishes to make a complaint about the service provided by the PRS then they must make it clear they are making a complaint and set out the reasons and the basis of the complaint in writing.
- 9.2 Complaints cannot be made against a Final Decision of the PRS as the decision is final and binding on the parties if it is agreed by the Complainant.
- 9.3 The complaint must be emailed to info@theprs.co.uk or posted to Property Redress Scheme, Complaints Team, 1st Floor, Lumiere, Elstree Way, Borehamwood, WD6 1JH.
- 9.4 All complaints will be fully considered and an initial response will be sent within 5 working days. If the PRS expects it to take longer to provide a full response then they will contact the Complainant and explain why.
- 9.5 If the PRS provides a final response to the complaint then the PRS reserves the right not to enter into any further correspondence on the matter.

10. Information Provision

10.1 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.

10.2 The PRS has entered into a Memorandum of Understanding with the other government approved redress schemes to cover exchange of information and common approach to decision making.

10.3 The main information that will be required to be shared will be in relation to Members who are under investigation and/or 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.

10.4 If a regulatory or enforcement body requests any information from the PRS then the PRS reserves the right to provide this information in a timely manner as requested.

11. Confidentiality

11.1 The PRS may use any information freely provided by a Complainant or a Member in its consideration of a complaint provided it is for the express purpose of dealing with that complaint.

11.2 The PRS 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).

11.3 The PRS shall always consider any specific requests for disclosure received from a party.

11.4 The PRS will act in accordance with all data protection legislation and shall take all reasonable steps to ensure that all PRS staff keeps confidential any information provided as part of the investigation of a complaint, whether or not it is disclosed to the other party.



12. Annual Report

The PRS Managing Director will be responsible for producing the PRS's annual report. This report will set out the activities of the PRS, Member numbers and sectors, number of complaints received, number rejected, number referred back to the Member, number requiring mediation and the number requiring a decision. Figures will be released on the types of complaint and the results of the PRS's decisions.

13. Best Practice

13.1 In order to ensure that best practice standards are achieved within the industry, the PRS will publicise:

- a. it's legal constitution, governance, and funding arrangements;
- b. the types of complaints which may be referred;
- c. the rules governing the referral of complaints;
- 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 any expert advice to assist with investigation;
- h. the jurisdiction, powers and method of appointment of the Head of Redress.

13.2 The PRS will also:

- a. publicise decisions made by the PRS in the form of case studies from time to time;
- b. provide guidance on the types of evidence that are considered by the PRS and how best to set out a complaint or response;
- c. notify in writing or by telephone all parties of any action taken by the PRS in relation to a complaint;
- d. provide help and guidance to Complainants and Members to understand any PRS process or to fill out any PRS form;
- e. 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 PRS are provided with a satisfactory authority for that person to act;
- f. consider the needs of disadvantaged and vulnerable people and make the timescales flexible if a Complainant can show they have a valid reason to require more time;
- g. include on its website a public search facility so consumers/Complainants can check whether the person or business is a member.

14. Miscellaneous Provisions

The following miscellaneous provisions apply:

- 14.1 these Terms of Reference may need to be updated from time to time. Notices of any significant changes will be posted on our website, in newsletters and by email where the Member has provided us with an email;
- 14.2 the Member agrees to abide by the latest version of the Terms of Reference notwithstanding any earlier version which were in force when joining the PRS;
- 14.3 the PRS may delay action if the PRS have any concerns about a Member's compliance with the Terms of Reference, identity, fraud or money laundering;
- 14.4 the PRS cannot be held responsible for intervening events beyond our control which prevent, delay or impede the PRS's ability to operate the Scheme or these Terms of Reference;
- 14.5 the PRS will not be responsible for the Member missing an email from the PRS when the message was received into the Member's spam email inbox. The Member is responsible for adding PRS email addresses to their 'safe sender' lists if necessary;
- 14.6 The PRS will comply with all relevant Data Protection legislation. All Members and Complainants agree that the PRS is a data controller who will need to use the data provided to contact them to resolve any complaint made to the PRS.
- 14.7 these Terms of Reference are governed by and shall be construed in accordance with relevant UK law;
- 14.8 the PRS's previous decisions may not be relied upon as precedent or authority for deciding any following complaint. Each complaint is addressed on its own individual merits and supporting evidence submitted by both parties.



APPENDIX 1

Specific Terms of Reference for Letting and Property Management Agents in England

The Property Redress Scheme offers a consumer redress scheme authorised by the Ministry of Housing, Communities & Local Government (“MHCLG”) 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”).

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.

Agents who are covered by the above definitions and join the PRS must:

- a. inform consumers of their membership with the PRS;
- b. display a PRS window sticker in all offices and display the PRS logo and link on their website;
- c. provide information about the PRS to all consumers when signing any agreement and provide information on how to raise a complaint with the PRS at the point any formal complaint is received;
- d. provide a copy of their internal complaints procedure to all consumers or use the Model Complaints process available in the PRS Member’s area of the website;
- e. take into consideration any special measures required to inform and explain their practices and procedures to vulnerable consumers;
- f. comply, keep up to date with and act in accordance with all relevant legislation;
- g. treat consumers equally regardless of sex, race, religion, disability and sexual orientation;
- h. ensure all consumers are provided with clear written details of agreements with them;

- i. for those undertaking lettings work, comply with the Private Rented Sector Code of Practice and CMA Guidance for Lettings Professionals on Consumer Protection Law;
- j. for those undertaking property management work comply with the RICS UK Residential Property Standard;
- k. Under the Consumer Rights Act 2015 Agents in England MUST:
 - 1. publicise whether or not they are a member of a client money protection scheme and display a notice stipulating which scheme they are a member of;
 - 2. display their fees, charges and penalties which are payable to the Agent by a customer. The list must be displayed at any premises where the Agent comes face-to-face with an existing or potential customer.

It is now a legal requirement for those undertaking letting agency work in Wales to join an authorised consumer redress scheme under the Rent Smart Wales registration requirement - <https://www.rentsmart.gov.wales/en/>

The PRS recommends that Letting and Property Management Agents purchase appropriate Professional Indemnity Insurance and inform their insurance provider immediately if they are subject to a formal complaint.

Letting and Property Management Agents based in all areas of the UK can join the PRS and agree to abide by the PRS Terms of Reference in the same way as those in England and Wales who are legally required to join a consumer redress scheme.



APPENDIX 2

General membership obligations for Estate Agents in UK

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

Members who undertake Estate Agency work are required to purchase Professional Indemnity Insurance. Although the Property Redress Scheme will not request evidence of the insurance when the Agent joins, the PRS can request evidence of the insurance at any point during the membership. If the Agent is unable to supply evidence of this insurance then the PRS is entitled to cancel the Agent’s membership.

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);
- b “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).

Agents who are covered by the above definitions and join the PRS must:

- a. inform their consumers of their membership with the PRS;
- b. provide information about the PRS to all consumers when signing any agreement and how to raise a complaint with the PRS at the point any formal complaint is received;
- c. provide a copy of their internal complaints procedure to all consumers or use the Model Complaints process available in the Member’s area of the PRS website;
- d. take into consideration any special measures required to inform and explain their practices and procedures to vulnerable consumers;
- e. comply, keep up to date with and act in accordance with all relevant legislation;
- f. treat consumers equally regardless of sex, race, religion, disability and sexual orientation;
- l. ensure all consumers are provided with clear written details of agreements with them;
- m. ensure that they have appropriate Professional Indemnity Insurance cover in place and notify their professional indemnity insurer immediately if they are subject of a formal complaint;

- n. *comply with the National Trading Standard Estate Agency Team Guidance on Property Sales;*
- o. *under the Estate Agents Act 1979 (as amended):*
 - 1. Provide full and detailed information about fees and charges for your services;
 - 2. Disclose any personal interest that you may have in any sale;
 - 3. Keep consumers promptly informed about offers received;
 - 4. Handle consumers' money properly in accordance with the Estate Agents Act (EEA) 1979 as amended.



APPENDIX 3

Terms of Reference for other Property Professionals

The PRS is a consumer redress scheme offering redress to consumers of products offered by property professional members of the PRS. The PRS is authorised by the Chartered Trading Standards Institute to offer government approved ADR to the property industry under the ADR Regulation 2015. More information can be found at <https://www.businesscompanion.info/en/quick-guides/consumer-contracts/alternative-dispute-resolution>

The PRS offers redress to the following Property Professionals:

- **Company/Private Landlords**
- **Cleaners**
- **Builders**
- **Gardeners**
- **Handymen**
- **Inventory Providers**
- **Movers**
- **Painters/Decorators**
- **Property Developers**
- **Property Sourcers**
- **Relocation Professionals**
- **Surveyors**
- **Tenant Referencing Providers**
- **Utility (and other service) Brokers**
- **Other – on request**

The following definitions apply to Property Professional Members

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

Property Professionals who join the PRS are expected to:

- inform their consumers of their membership with the PRS;*
- display a PRS window sticker in all offices and display the PRS logo and link on their website;*
- provide information about the PRS to all consumers when signing any agreement and how to raise a complaint with the PRS at the point any formal complaint is received;*
- provide a copy of their internal complaints procedure to all consumers or use the Model Complaints process available in the PRS Member’s area of the website;*
- take into consideration any special measures required to inform and explain their practices and procedures to vulnerable consumers;*
- act in accordance with any Code of Practice the Member has agreed to abide by;*
- comply, keep up to date with and act in accordance with all relevant legislation;*
- treat consumers equally regardless of sex, race, religion, disability and sexual orientation;*
- Ensure all consumers are provided with clear written details of agreements made with them.*

Property Professional Members are not legally required to agree to resolve a complaint using the PRS process. If the Member opts not to agree to resolve a complaint using the PRS process then the matter will be brought to the attention of the Compliance Officer who will investigate. The Compliance Officer may recommend the Member has their Membership cancelled due to the Member not co-operating with the PRS process as this is against the spirit of the Member’s Membership.

APPENDIX 4

Definitions

Award

A payment as outlined in a decision.

Client Money Account

A secure ring-fenced account used by the Member designated only for client money.

Client Money Protection Scheme

A Membership scheme which offers the benefit of a guarantee to cover any client money which is misappropriated or stolen by the owners of the Agent member.

Complainant

A consumer of services provided by Agents undertaking Lettings Agency Work, Property Management Work or Estate Agency work.

Complaint

A written communication from the consumer to the Member expressing dissatisfaction with the service provided.

Default Decision

The PRS's final decision made in the event that the Member fails to respond or cooperate with the PRS.

Early Resolution

A process by which the Case Assessor, having received all the evidence, will talk through the issues with you and the Complainant who is making a claim, to see if a resolution can be found.

Error in Fact or Law

An error in fact is not a difference of opinion on a matter, it is when a fact materially relevant to the case, which was set out in the complaint or response, has not been dealt with in the decision. An error in law would be an error based on interpreting any relevant law incorrectly.

Final Decision

The PRS's final decision having taken into consideration any review request made by the parties. If the final decision is accepted by the Complainant then it is binding on the member. No further review request will be considered.

Member

Property Agent or Professional with a live membership with the PRS (this includes all members of staff of the company).

Memorandum of Understanding

The government authorised redress schemes share information when a Property Agent is expelled for non-compliance of a decision and the Property Agent will not be able to join one of the other schemes unless they comply with the outstanding decision.

Professional Indemnity Insurance

Professional indemnity insurance covers you for compensation you have to pay to your clients because of problems with your advice or work, including compensatory damages and claimant's costs awarded against you. It should also pay your legal defence costs incurred. It may also pay for mistakes to be corrected and reimburse you for fees that your client might refuse to pay.

Proposed Decision

A Decision provided by the PRS to the parties which can be subject to a review if either the Complainant or Member believes that there is an error in fact or law in the decision or the PRS has made an administrative mistake.

Review

A formal re-assessment of the Proposed Decision with the intention of instituting change if proven on the grounds of any error in fact or law.

Subscription

The period of paid membership with the PRS is usually for one year.

Time and Trouble

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 PRS.

Vulnerable Consumer

A person whose personal circumstances or characteristics affects their ability to understand a transaction or make a decision for example, language barrier, physical or mental disability.



HF Resolution Ltd
is a subsidiary of
HFIS PLC

☎ 0333 321 9418

✉ info@theprs.co.uk

🌐 www.theprs.co.uk

Scheme Authorised by:



Ministry of Housing,
Communities &
Local Government

**NATIONAL
TRADING
STANDARDS**
Estate Agency Team
Protecting Consumers
Safeguarding Businesses

The Property Redress Scheme is a government authorised Consumer Redress Scheme for Lettings, Property Management and Estate Agents and other Property Professionals. HF Resolution Ltd trading as Property Redress Scheme. Registered Office: Lumiere, Suite 1-3, 1st Floor, Elstree Way, Borehamwood, WD6 1JH. Registered in England 08994516.