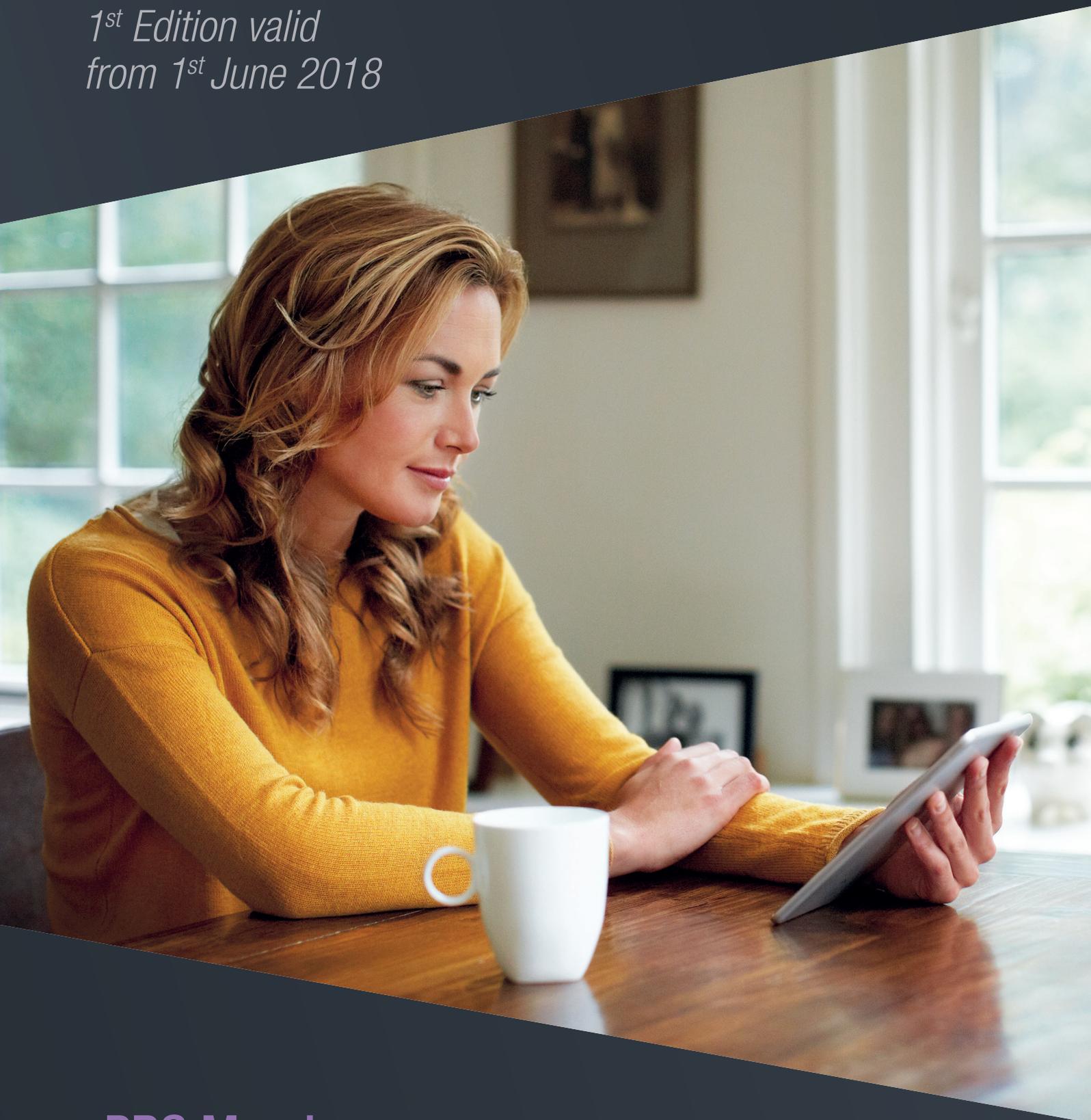


# Conditions of Complaints

*1<sup>st</sup> Edition valid  
from 1<sup>st</sup> June 2018*

**PRS** Property  
Redress  
Scheme



**PRS Members  
and Consumers**

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# Introduction

These Conditions of Complaints are an addendum to the Property Redress Scheme (PRS) Terms of Reference and set out the process and practice that will occur when a complaint is raised with the PRS. Refer to the Terms of Reference Appendix 4 for definitions.

These Conditions of Complaints set out the requirements for raising a complaint, the responsibilities of both parties once a complaint has been raised, and how the PRS will deal with the complaint including its resolution.

The PRS offers an alternative dispute resolution (ADR) mechanism which is an alternative method to the Complainant and Member resolving the complaint through the courts.

The Complainant and Member will be given the opportunity to present their case and evidence to the PRS who will analyse the evidence submitted, with the initial aim of facilitating an Early Resolution.

The PRS has found that most complaints can be resolved early, simply by talking through the issues and reaching a settlement, avoiding an even lengthier and costly process.

If Early Resolution cannot be achieved, the PRS will make a Proposed Decision to the complaint.

Either party has a right to request a Review of a Proposed Decision if there has been an error in fact or law or an administrative mistake.

If a Review is accepted the PRS will then make a Final Decision which if the Complainant accepts is binding on the Member.

In deciding on a complaint the PRS 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.

In making a decision, the PRS 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 industry 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. ensure that the burden of proof for any decision made will be on the 'balance of probabilities'
- e. ensure that 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 mediation if he feels that is the best way to resolve the complaint

# Section A: Do I have grounds to raise a complaint?

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

- A1. A breach of the Member's obligations under the law;
- A2. Where legal rights have been impinged or breached;
- A3. Where a Member has not acted in accordance with a Code of Practice it has signed up to, or any internal rules, procedures or statements of practice;
- A4. Unfair treatment by the Member; including, but not limited to:
  - A4.1 Poor or incompetent service;
  - A4.2 Rudeness or discourtesy;
  - A4.3 Not explaining matters;
  - A4.4 Not administering a transaction as efficiently as would be expected;
  - A4.5 Avoidable delays.

For criteria which is outside our remit, see Section C.



## Section B: Can I raise a complaint?

- B1. The Complainant must have:
- B1.1 Sent a formal complaint in writing to the Member within 12 months of the incident they are complaining about occurring;
  - B1.2 Tried to resolve the matter directly with the Member;
  - B1.3 Waited eight (8) weeks for their complaint to have been resolved by the Member in writing;
  - B1.4 Received a written response from the Member but remains dissatisfied with the outcome of the response;
  - B1.5 Raised the complaint with the PRS within 12 months from the date of the last communication from the Member or from when the Member should have responded;
  - B1.6 Submitted a complaint to the Property Redress Scheme (PRS) either online or using the complaint form.
- B2. On receipt of a complaint the scheme will check the following:
- B2.1 That the property agent or professional is a current member of the PRS;
  - B2.2 That a formal complaint in writing has been made to the Member;
  - B2.3 That the Member has had an opportunity to deal with the complaint and provided a final response to the complaint and/or more than eight weeks has passed from the formal written complaint;
  - B2.4 The Complainant has grounds for complaint (as per Section A);
  - B2.5 The complaint has been raised within the timeframes in B1;
  - B2.6 The Complainant has submitted relevant evidence to the complaint.

## Section C: Non-Acceptance of a Complaint

The PRS reserves the right not to investigate a complaint (or any part of a complaint), or shall discontinue the investigation of a complaint (or any part), if:

- C1. The complaint occurred prior to the agent/company joining the PRS (unless they were a member of another redress scheme during that period);
- C2. The amount claimed is in excess of £25,000;
- C3. In the PRS's opinion the complaint is considered to be unsupported, frivolous or vexatious;
- C4. The Complainant cannot demonstrate that the Member's full complaint process has been completed;
- C5. The complaint relates to alleged criminal activity;
- C6. The resolution to the complaint would be covered by appropriate insurance;
- C7. The PRS deems that it is more appropriate for the complaint to be dealt with by a Court, Tribunal or another independent complaints, conciliation or arbitration procedure such as a tenancy deposit protection scheme;
- C8. Legal proceedings have been issued or the complaint is already being considered or has been considered by a Court, Tribunal or another independent complaints, conciliation or arbitration procedure;
- C9. In the PRS's opinion the complaint does not have a reasonable prospect of success. The PRS will provide the reasons if relying on this clause;
- C10. The Complainant has not fulfilled their obligations under a contract or agreement such as paying rent or fees;
- C11. The Complainant fails to respond to any reasonable request from the PRS within the timescale provided;
- C12. The PRS deems that any offer provided by the Member is a suitable resolution to the matter and would not be bettered by the PRS. In this circumstance the PRS will inform the Complainant that the offer should be accepted or rejected but by rejecting the offer the matter will be closed by the PRS.



## Section D: Initial Contact & Evidence

### D1. First Contact

- D1.1 On receipt of a complaint the PRS will assign the complaint to a Case Assessor who will check the complaint complies with paragraphs in Section A and B and make contact with both parties within **5 working days**.
- D1.2 The Case Assessor will then allow the Complainant **10 working days** to submit all relevant evidence or further information if requested to do so.
- D1.3 Failure to provide this information may result in the complaint being closed;

### D2. Member Response

- D2.1 Once a complaint is accepted, the Case Assessor will notify the Member of the complaint and give the Member **10 working days** to resolve the complaint directly with the Complainant or submit their Rebuttal evidence.
- D2.2 If the Member fails to provide a response or any evidence this will lead to a Default Decision being made on the Complainant's evidence alone as laid out in Section I. In addition the Member may be charged the publicised complaint fee even if they joined on the enhanced model.
- D2.3 If a mutual agreement is made within the **10 working days** the PRS will request confirmation that the Complainant is satisfied with the resolution and the case will be closed.

### D3. Return of Evidence

- D3.1 The PRS will not return any evidence unless we are informed on submission that the party requires it back. Any physical evidence held by the scheme for over four weeks from receipt will be destroyed or shredded.
- D3.2 The PRS cannot be held liable for any loss suffered as a result of us not returning the evidence when we were not informed on submission that it is required back.
- D3.3 The PRS will arrange with the party how to return the evidence. If it requires special delivery then the amount required to send the evidence back must be paid in advance by the party requesting the evidence back.

## Section E: Early Resolution

- E1. Once all evidence has been received, the Case Assessor will have up to **15 working days** to outline their understanding of the complaint and proposed grounds for facilitating Early Resolution to both parties.
- E2. If both parties agree to Early Resolution they do so in full and final settlement of the complaint. At this point the PRS will issue a declaration to be signed by both parties confirming their agreement, and this becomes the PRS's Final Decision.
- E3. If both parties are unable to agree to Early Resolution, the complaint will proceed to the next stage, either after the **15 working day** period or earlier if the proposed Early Resolution is unsuccessful.

## Section F: The Proposed Decision

- F1. If the parties have not reached an early resolution with the assistance of the PRS, a Proposed Decision will then be produced by the Case Assessor within **20 working days** based on the evidence submitted and any discussions with the parties.
- F2. If the Member has joined under the Entry Model subscription then they will be required to pay the advertised complaint fee to the PRS at this point. The PRS will invoice the Member for payment which must be paid within **14 days** from the date of the invoice.
- F3. The PRS will send the Proposed Decision, once completed, to the Complainant and the Member who will both have **10 working days** to accept or request a review.
- F4. The Proposed Decision is binding on the parties unless a review is requested due to an error in fact, in law or an administrative error.

## Section G: Party Response and Review Request/ Acceptance Criteria and Process

- G1. Party Response
  - G1.1 Both parties have **10 working days** to accept the Proposed Decision, which will then become the PRS's Final Decision and be binding on the Member;
  - G1.2 If either party considers there has been an error in fact or in law (or both), or there has been an administrative error, then they may request a review of the Proposed Decision and the other party will then have **5 working days** to respond.
  - G1.3 The person raising the review request will not be able to submit further evidence at this point.
- G2. Lack of Party Response
  - G2.1 If the Complainant has accepted the Proposed Decision and the Member fails to respond by either accepting or requesting a review then the Proposed Decision will become the PRS's Final Decision and will be binding on the Member;
  - G2.2 If the Complainant fails to respond to the PRS's Proposed Decision the PRS will consider that they do not agree with the Proposed Decision but do not have grounds for an appeal and the case will be closed.
- G3. Review request rejected
  - G3.1 If the request for a Review is rejected by the PRS a reason will be provided, and the Proposed Decision will become the Final Decision.
  - G3.2 The requesting party may not make a further application for Review of the Final Decision.
- G4. Miscellaneous
  - G4.1 If the Complainant does not agree with the Proposed Decision they still have the option of taking the Member to Court to recover any losses they believe they have suffered;
  - G4.2 The PRS may accept a late notification from either party if they provide sufficient reason for not responding to us within the notified time scale;

## Section H: Final Decision

- H1. Once a review request has been accepted by the PRS, the complaint will be escalated to the office of the Head of Redress for a Final Decision.
- H2. From the response deadline, the PRS will have **20 working days** to review the Proposed Decision which will be based on the review request and any further representations to provide a Final Decision.
- H3. After carrying out the review the PRS will substitute the Proposed Decision with a Final Decision which will set out:
- a. A summary of the review request and any response;
  - b. The reasons, if any, for amending the Proposed Decision;
  - c. Any redress required from the Member, be it financial or otherwise.
- H4. On delivery of the Final Decision, the Complainant will have **15 working days** to inform the PRS whether they accept the findings.
- H5. The Member is generally required to comply with a final decision within **28 days**. If the Member fails to comply within the specified timeframe in the decision then they will be subject to disciplinary action by the PRS in accordance with the Terms of Reference;
- H6. If the PRS does not hear from the Complainant after **15 working days** the Final Decision will be deemed as not accepted by the Complainant and the case will be closed.
- H7. If the Complainant does not agree with the decision the case will be closed. The Complainant will still have the option of taking the Member to court to recover any losses they believe they have suffered.
- H8. The PRS may accept a late notification from either party if they provide sufficient reason for not responding to the PRS within the notified time scale.
- H9. If the decision is accepted by the Complainant then it is binding on the Member.
- H10. This decision is final and no further requests for review will be considered.



## Section I: Default Decision Process

- I1. If the Member fails to respond or cooperate with the PRS within the specified timescales, the PRS will notify both parties that the complaint will be referred to the Head of Redress for a Default Decision based on the evidence that has been submitted.
- I2. The Member will be required to pay the advertised complaint fee to the PRS notwithstanding which membership model they joined on;
- I3. The Default Decision will be sent to the Complainant who has **15 working days** to accept the Default Decision and the Member will be notified of the Default Decision. If the Default Decision is accepted by the Complainant, the Member must comply with the findings within **28 days**.
- I4. If the Member fails to comply with the decision within the specified time period, the Complainant may pursue the matter further through the legal process and will be entitled to use this decision as evidence that due process has been undertaken.
- I5. In the event that the Member fails to comply with the decision they will be subject to disciplinary action by the PRS in accordance with the Terms of Reference Disciplinary Section.

## Section J: Evidence Requirements

- J1. It is the responsibility of both the Complainant and the Member to provide all relevant evidence which they intend to rely on. The PRS takes no responsibility for evidence that either party may have, but does not submitted towards the resolution of a complaint and any decision will be based on the evidence provided.
- J2. The PRS may be required to clarify evidence but will only request further evidence if it is felt that it would be contrary to natural justice not to do so.
- J3. If the PRS makes a request to a party for information or evidence and they do not respond within the period set out then any evidence provided late may not be considered.
- J4. The PRS reserves the right not to accept any new issues once a complaint has been accepted. If either party wishes to pursue further issues, a new complaint will need to be raised.
- J5. The PRS has produced an evidence checklist which is contained at the end of these Conditions of Complaints.

## Section K: Awards

- K1. In settlement of the complaint, the PRS 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 inconvenience and distress;
  - g. other appropriate action suggested by the Complainant or decided by the PRS
  - h. Failure by the Member to provide evidence of their formal complaints process
- K2. 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.
- K3. The maximum monetary compensation payment the PRS can award to a Complainant is £25,000.00.



## Section L: Interest payments

- L1. 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.
- L2. The interest rate used by the PRS 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.

## Section M: Non-Compliance and Disciplinary procedure

For information regarding the compliance and disciplinary procedure, please refer to the most current Terms of Reference.



# The Complaints Process

Complaint Raised	<p>We will only accept a complaint where:</p> <ul style="list-style-type: none"> <li>• the Complainant has followed the Member's formal complaints process</li> <li>• at least <b>8 weeks</b> has been allowed for the Member to resolve the complaint</li> <li>• there is no response or no satisfactory resolution has been reached.</li> </ul>
First Contact from Case Assessor	<p>The complaint will be assigned to a Case Assessor who will:</p> <ul style="list-style-type: none"> <li>• make First Contact with the complainant within <b>5 working days</b></li> <li>• determine whether the complaint is valid and acceptable by the Scheme under the Terms of Reference.</li> <li>• then allow the Complainant <b>10 working days</b> to submit evidence or further information if requested.</li> </ul>
Member Response	<p>If the complaint is accepted, the Case Assessor will:</p> <ul style="list-style-type: none"> <li>• notify the Member of the valid complaint</li> <li>• instruct the Member to either submit their Rebuttal evidence to the Case Assessor, or resolve the complaint directly with the Complainant, within <b>10 working days</b></li> <li>• wait for confirmation on whether a mutual agreement has been reached, or whether the complaint should continue</li> <li>• make a Default decision if the Member fails to provide rebuttal evidence, for which a charge will be made.</li> </ul>
Early Resolution	<p>Once all evidence has been received, the Case Assessor has up to <b>15 working days</b> to:</p> <ul style="list-style-type: none"> <li>• outline their understanding of the complaint and proposed grounds for resolution</li> <li>• attempt to facilitate Early Resolution of the complaint, and gain agreement which becomes the Final Decision of the PRS or</li> <li>• proceed the complaint to the next stage, either after the 15 working day period or earlier if Early Resolution is not proving successful.</li> </ul>
Proposed Decision	<ul style="list-style-type: none"> <li>• The Case Assessor will draft a Proposed Decision based on the evidence provided and discussions between the parties</li> <li>• The Proposed Decision will be issued within <b>20 working days</b>.</li> </ul>
Party Response	<p>Once a decision has been made:</p> <ul style="list-style-type: none"> <li>• Both parties have <b>10 working days</b> to either accept the Proposed Decision or request a Review of the decision on a basis of an error in fact, law or administrative error</li> <li>• If the Proposed Decision is accepted by the Complainant, a Declaration will be sent to be returned to the PRS</li> <li>• If a Review has been requested, the other party will then have <b>5 working days</b> to respond</li> <li>• If the Review is rejected, the Proposed Decision will become the Final Decision.</li> </ul>
Final Decision	<p>If a Review Request is accepted:</p> <ul style="list-style-type: none"> <li>• the Head of Redress will have <b>20 working days</b> to issue a Final Decision</li> <li>• The Complainant has <b>15 working days</b> to accept the Final Decision which will become binding on the Member. Failure to respond will result in the complaint being closed.</li> </ul>
Compliance	<ul style="list-style-type: none"> <li>• the Member will have <b>28 days</b> to comply with the decision, at whichever stage it is made</li> <li>• the Complainant can take the Member to Court for non-compliance.</li> </ul>

# Evidence Checklist

When making or defending a complaint, a Complainant will need to convince the PRS that its version of events has substance and this can be done by providing evidence in support the case.

In all cases we will require evidence, by way of the Member's final written response, that the Member's internal complaints process has been exhausted and 8 weeks has been allowed for the Member to resolve the complaint. If you are raising a complaint on someone's behalf we will also require a signed letter of authority.

To assist both parties, we have put together a checklist of documents below that we would expect to see for the types of complaints we receive. We request that evidence submitted is relevant to the complaint. The more relevant evidence that can be supplied, the easier it will be for us to understand and resolve the complaint.

N.B. This list is not exhaustive.

Complainant	Member
<b>Lettings Complaints</b>	
Terms of Business Tenancy Agreement Holding Deposit receipt/agreement Schedule of costs, together with estimates, invoices, receipts and photographs if available. Proof of Losses Bank Statements Deposit Scheme Adjudication Any other paperwork held relevant to your specific complaints e.g. emails/letters/case notes Any notes relating to verbal discussions Court Papers	Terms of Business Application Paperwork Evidence of references Tenancy Agreement Check in/check out reports Inventory Court Papers Contemporaneous records for entire transaction including ongoing monitoring or management of the property Statements of Account
<b>Residential Leasehold Management Complaints</b>	
Management Agreement / Terms of Business Tenancy Agreement/Lease Agreement Any other paperwork held relevant to your specific complaints e.g. emails/letters/case notes Schedule of costs, together with estimates, invoices, receipts and photographs if available. Any notes relating to verbal discussions AGM minutes Court/Tribunal documents	Management Agreement / Terms of Business All records for entire transaction including ongoing monitoring or management of the property Statements of Account AGM minutes Court/Tribunal documents
<b>Sales Complaints</b>	
Signed Agency Agreement & Terms of Business All other paperwork held relevant to your specific complaints e.g. emails/letters/case notes Any notes relating to verbal discussions Commission Invoice	Agency Agreement – signed with full set of terms and conditions Market Appraisal Viewing Records Particulars of Sale Notification/Confirmation of Offers Memorandum of Sale All records for entire transaction Invoices





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

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