



Terms of Reference

4th Edition valid from 1st October 2020

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Introduction

We at the Property Redress Scheme (the PRS) are authorised by the government to offer an escalated complaints process to those wanting to make a complaint caused by the acts or omissions of one of our members.

This document sets out how we work, our membership services and how we resolve complaints about our services. These Terms of Reference should be read together with the PRS Conditions of Complaints, which explains how we deal with complaints and our processes.

Please note the PRS is not a regulator or an enforcement agency.

The PRS is a trading name of HF Resolution Ltd and has three distinct parts to its structure:

- Executive Board and Operations
- Office of the Head of Redress
- Advisory Council

Section A: Purpose

A1. Our main purpose is to:

- A1.1 Give property agents and professionals the opportunity to join us, an approved consumer redress scheme, and to clearly display our logo, letting their customers know they are complying with their legal responsibilities
- A1.2 Resolve or settle unresolved complaints, caused by an act or omission of our member, once the person making the complaint has followed the member's internal complaints procedure
- A1.3 Try and reach an early resolution, agreeable to both parties, or to escalate the complaint for a proposed decision, default decision or final decision
- A1.4 Consider all evidence and where appropriate make an award to the person who made the complaint, for financial loss or unnecessary aggravation, distress and/or inconvenience caused by our member
- A1.5 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
- A1.6 Make decisions on the basis of what we believe is fair and reasonable in each case
- A1.7 Offer you the option of reaching a solution to your complaint informally as opposed to using the courts

Section B: The Head of Redress & Advisory Council

B1. The Head of Redress is:

- B1.1 Responsible for all decisions made by the PRS. Any decision on a complaint is made under the authority of the Head of Redress
- B1.2 Accountable to the PRS Executive Board ("the Board") but is not a member of the Board
- B1.3 Independent and impartial from the executive responsibilities of running the PRS
- B1.4 Responsible for representing the PRS to the property industry
- B1.5 A permanent member of the Advisory Council, but has no voting rights

B2. The PRS also has an Advisory Council which:

- B2.1 Monitors our accountability
- B2.2 Advises and scrutinises how we run
- B2.3 Has an independent chairperson and includes representatives from the property industry and the consumer sector

Section C: Your membership

- C1. As our member you must:
- C1.1 Comply with these Terms of Reference, including all your membership responsibilities as set out in the Schedules at the end of this document
 - C1.2 Complete and sign/submit an 'application for membership' form
 - C1.3 If you do not give us all the information we need when you apply for membership, or we later discover the information is incorrect, we reserve the right to cancel your membership
 - C1.4 Pay all joining, renewal, complaint and penalty fees within the given time period, or as requested by us
 - C1.5 Give a copy of your internal complaints process to all consumers (you can find our model complaints process on our website if you do not have one). This should also be available online and available to all consumers who ask
 - C1.6 Display our window sticker in all your offices – these will be supplied as part of your membership pack
 - C1.7 Display our PRS logo and link on your website
 - C1.8 Give all consumers information about us when they sign any agreement with you, and at the point you receive a formal complaint
 - C1.9 Comply with and keep up to date with all new and relevant laws, industry best practice standards, as well as with any code/s of practice you may have signed up to
 - C1.10 Keep all your contact details up to date on our system, and inform us of any changes immediately, by both telephone and email. This includes both member and property owner details
 - C1.11 Respond as soon as possible to any communication and requests for information and/or evidence from us
 - C1.12 Make sure to add us to your list of 'safe' email addresses as we cannot be responsible for any email that ends up in your SPAM or JUNK folder, and you should check these regularly so that no emails are missed

Section D: Membership options

D1. We offer you the following membership options:

D1.1 Option 1 - Enhanced Model

Annual fee for your head office and an additional annual fee per branch with no individual complaint fees (see D.2 below)

NOTE: You will be charged our advertised complaint fee if you do not provide a response and/or evidence to a complaint, when requested, which results in a default decision being made

D1.2 Option 2 - Entry Model

Low annual subscription fee for your head office and an additional annual fee for each branch, if any, plus additional complaint fees as advertised on our website if either a proposed decision or a default decision is required, even if you accept the decision

D1.3 Option 3 – Residential Leasehold Block Managing Agents

Annual fee per company where 80% or more of the work is in leasehold block management

NOTE: There are no branch fees for this model. You will be charged complaint fees depending on the type of complaint we are required to resolve

D2. What if an Enhanced Model member has too many complaints raised against them?

D2.1 If we receive, and have accepted, more than five complaints about you as an Enhanced Model member in any 12-month period, we have the right to move you to the Entry Model membership level

D2.2 This will mean you will be charged the standard complaint fee for any future complaints during the rest of that subscription period. We will then discuss your return to the Enhanced Level membership at the renewal date but it is not automatic and the relevant renewal fee will apply

D3. Our membership and complaint fees, for the three membership options, will be published on our website and may be amended from time to time. You will be given a month's notice of any changes to either of these fees

Section E: Membership subscription

- E1. Whichever membership subscription you choose, you will be covered for all the work you carry out. This means an agent who undertakes estate, lettings agency and leasehold block management work can join for the same single fee - there are no separate fees for different kinds of work
- E2. You will need to tell us what work is carried out at your head office and any branches, and satisfy us that you comply with any additional legal requirements connected to this kind of work
- E3. We will contact you when your renewal date is approaching. If you pay by debit or credit card over the phone, our call recording facility will be paused for data protection purposes while your payment is taken
- E4. We recommend our members chose the automatic renewal to make sure there is no break in their membership
- E5. Other branches:
 - E5.1 Your head office and all branches must be on the same membership model
 - E5.2 You must register and pay for all actively trading branches (other offices) associated with your company, in addition to your head office
 - E5.3 If you tell us that you have opened a new branch during your current subscription period, we will charge you a pro-rata fee for each new branch, to cover the remainder of the subscription period
 - E5.4 If we discover that you have a branch that is not registered, we will investigate why this is the case. We will then invoice you from the beginning of your subscription period or from the date the newly discovered branch was open. If the invoice is not paid, we may cancel your membership
- E6. Web-based businesses:
 - E6.1 If your business is wholly web-based, you must register a 'head office' with a UK address where all written communication will be received. Your level of subscription and whether you are required to register any additional 'branches' will be based on the business model you operate and we have the right to make a final decision on an individual basis

Section F: Membership cancellation/expiry

- F1. If you wish to cancel your membership please write to us by post or by email, to info@theprs.co.uk, explaining your reasons for requesting cancellation
- F2. On cancellation or expiry of your membership, we are required to inform Trading Standards along with the other redress scheme(s) in line with our responsibilities and Memorandum of Understanding
- F3. Refunds
 - F3.1 If you cancel your membership during the subscription period or if we have reason to cancel your membership, any fees paid will not be refunded
 - F3.2 Any new member of the PRS, who has been found to have been removed from another redress scheme will have their membership cancelled and will not be entitled to have their membership fee refunded
 - F3.3 Any refund will be at our discretion and is not guaranteed. For money laundering purposes, we will

Section G: Disciplinary

- G1. Our compliance officer will investigate your conduct if:
 - G1.1 You break any these Terms of Reference
 - G1.2 You do not comply with our decision; or you avoid or delay complying with the our process or any decision made
 - G1.3 You do not pay our invoiced fees when due
 - G1.4 It has been claimed you are acting, or have acted, in a way to negatively affect our reputation
 - G1.5 Trading Standards or another government body or organisation asks us to
 - G1.6 There is another valid reason to do so
- G2. Once an investigation has been carried out, our compliance officer will make a recommendation to the Head of Redress and Managing Director who will decided if your membership should be cancelled
- G3. If the Head of Redress and Managing Director agree that your membership should be cancelled, you will be informed, in writing, and provided with the reasons for this
- G4. Where we have made a decision to cancel your membership, we are required to inform the other Government authorised consumer redress scheme; Trading Standards; any relevant local authority and any trade association that you have joined. We will also name your company on a public list of expelled members and have the right to publish your expulsion in a press release
- G5. We will issue a penalty fee of £100 (flat fee) if you do not comply with our decision, and if this is the reason your membership is cancelled, you will need to comply with the decision, and pay the penalty fee before being able to join any redress scheme
 - G5.1 To re-join the PRS, you will need to pay an additional membership fee (which may be double the standard amount for the model) and you may be restricted to the Entry Level membership.
 - G5.2 Following expulsion, if a an agent subsequently fulfills their obligations to the satisfaction of the PRS, such as paying a decision award they are entitled to rejoin the PRS or join another authorised redress scheme.

Section H: Complaints about us

Our internal complaints process is set out on our website. If you would like a copy, please contact us on 0333 321 9418.

Section I: How we share information

- I1. We will provide information to any other person, or body, carrying out their responsibilities relating to Government approved redress scheme(s)
- I2. We have a Memorandum of Understanding with the other Government approved redress scheme which covers our common approach to making decisions, and exchange of information. The main information we will share relates to members who are under investigation and/or have had their membership of either scheme cancelled
- I3. If a regulatory or enforcement body requests any information about our members, we will provide the information in a reasonable time
- I4. We may also provide information to an organisation our member has joined, where their redress scheme membership is a requirement

Section J: Confidentiality

- J1. We may use any information provided when investigating a complaint, as long as it is relevant
- J2. We may refuse to provide information to either party if:
 - a. in our reasonable opinion it is not relevant
 - b. in our reasonable opinion, it is inappropriate or illegal
 - c. it concerns issues of personal security for our member
 - d. it is protected by legal or professional privilege (and such privilege has not been waived)
- J3. We will always consider specific requests for disclosure we receive
- J4. We will act in line with all General Data Protection Regulation (GDPR) and all other data protection laws
- J5. We will take all reasonable steps to make sure our staff keep any information we receive confidential during investigation, whether or not it has been sent (by agreement) to the other party
- J6. When the person making a complaint provides certain personal information, they accept that this gives authority to the member to use this personal information when responding to the complaint

Section K: Annual Report

- K1. The PRS Managing Director is responsible for producing our annual report which will contain:
1. Up-to-date information on our members and on the complaints we have dealt with
 2. A summary of the past 12 months for us, and the property industry
 3. A look ahead to the next 12 months

Section L: Best practice

- L1. So we can make sure we achieve best practice standards in the property industry, we will publish:
- a. our legal constitution, governance, and funding arrangements
 - b. the kind of complaints we can accept
 - c. the rules for accepting or declining a complaint
 - d. our process for making decisions
 - e. the level of, and how we apply, awards
 - f. the provision for securing any expert advice to help us with investigation
 - g. the jurisdiction, powers and method for appointing the Head of Redress
- L2. We will also:
- a. publish case studies
 - b. provide an evidence checklist which we think will help support your complaint or response
 - c. contact all parties, in writing or by telephone and/or email, about any action we have taken in relation to a complaint; provide any help and guidance you may need in
 - d. provide help in relation to any of our processes, or in filling out any of our forms
 - e. make the processes clear, transparent and easy to access for all. If you choose to use a third party to act on your behalf, we will need authority in writing
 - f. consider the individual needs and circumstances of all parties and apply reasonable flexibility in our timescales, if we believe this is necessary
 - g. include on our website a public search facility, so anyone wishing to make a complaint can check whether the person or business is our member

Section M: Miscellaneous

- M1. The following rules also apply in relation to our Terms of Reference:
- M1.1 We may need to update these Terms of Reference or our Conditions of Complaints, from time to time. We will post notice of any significant changes on our website, in newsletters and by email where you have, as required, provided us with an appropriate email address
 - M1.2 You agree to abide by the latest version which will replace any earlier version
 - M1.3 We may delay dealing with a case if we have any concerns about compliance with our rules, such as identity, potential fraud or money laundering activities
 - M1.4 We cannot be held responsible for events that happen beyond our control which prevent or delay our ability to operate
 - M1.5 This document is governed by, and shall be read in line with, relevant UK law
- M2. We will not be responsible if you miss any email from us when the message was sent correctly but received into your spam email inbox – you should check these regularly. You are responsible for adding our email address(s) to your 'safe sender' lists if necessary
- M3. We will comply with all relevant General Data Protection Regulations (GDPR) and all other Data Protection legislation. All parties agree (our members and people raising complaints) that we act as a data controller who will need to use the data provided to contact all parties (those concerned) in relation to complaints we receive
- M4. Each complaint will be investigated independently and impartially, and supporting evidence must be sent to us, both by those raising complaints and our members
- M5. Our previous decisions do not set any precedent and are not an authority for deciding any subsequent complaint. However, the Head of Redress will make sure each decision is made using our consistent approach

Schedule 1

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

The Property Redress Scheme:

- a. offers a consumer redress scheme authorised by the Ministry of Housing, Communities & Local Government ("MHCLG")
- b. offers redress to customers of letting 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")
- c. is approved by the National Trading Standards Estate Agency Team (NTSEAT) and the Chartered Trading Standards Institute (CTSI)
- d. is also approved under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

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 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 (referred to in our documents as the person making the complaint)

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 their offices
- 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 a formal complaint against the agent/ member 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 our website
- e. consider 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 and not discriminate in relation to their age, disability, gender reassignment, marriage and civil partnership or civil marriage, pregnancy and maternity, race, religion or belief, sex, and sexual orientation, (as per the Equality Act 2010) or any other factor that might place an individual at a disadvantage
- h. make sure all consumers are provided with clear written details of your agreements with them
- i. for those undertaking lettings work, comply with the Private Rented Sector Code of Practice and the Competitions and Markets Authority (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. Publish fees
 - k.1. Under the Consumer Rights Act 2015 agents in England MUST:
 - k1.1 publicise and display a notice specifying which client money protection scheme they are a member of. This has been a legal requirement since 01 April 2019
 - k1.2 display all their fees, charges and penalties, inclusive of VAT, that are payable to the agent by a customer/consumer. The list must be prominently displayed at any premises where the agent comes face-to-face with an existing or potential customer

- k.2. The Tenant Fees Act 2019 extends the requirement in 'k1.2' above to include any third party sites where details of a property are advertised e.g. a property portal or other similar websites. However, it is acceptable for the advert to include a link to another website where fees are clearly displayed but they this must be transparent and obvious to the prospective tenant

It is now a legal requirement for those carrying out 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/>

All letting and property management agents must join a government authorised client money protection scheme and we recommend the agent purchases 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 other areas of the UK can become a member, and in doing so agree to these Terms of Reference in the same way as those in England and Wales who are legally required to join a consumer redress scheme.

Schedule 2

General membership responsibilities for estate agents in the UK

We offer a redress scheme authorised by the National Trading Standards Estate and Lettings Agency Team at Powys County Council ("NTSELAT") to offer redress to customers of estate agents throughout the United Kingdom under the Consumers, Estate Agents and Redress Act 2007 ("CEARA").

Members who carry out estate agency work are required to purchase Professional Indemnity insurance. Although we will not request evidence of this insurance when an agent applies for membership, we can request evidence of it at any point during the membership. Where an agent cannot provide evidence of this insurance then we have the right to cancel their membership

"Estate agency work" means: Things done by any person in the course of a business (including a business where they are employed to carry out 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 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 carrying out estate agency work namely:

- a. "seller", in relation to residential property, means a person who says 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 says that he is, or may become interested in buying an interest in land in respect of that property (and includes a person who is buying such an interest)

(May be referred to in our documents as the person making the complaint)

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

- a. tell their consumers that they are our member
- b. display our window sticker in all offices and display our logo and link on their website

- c. provide information about us to all consumers when signing any agreement including how to make a complaint to us if, at any point, our member receives a formal complaint from the consumer
- d. provide a copy of their internal complaints process to all consumers or use the model complaints process on our website
- e. consider any special measures required for vulnerable consumers when informing and explaining their practices and procedures
- f. comply, keep up to date with and act in line with all relevant legislation
- g. treat consumers equally and not discriminate in relation to age, disability, gender reassignment, marriage and civil partnership, civil marriage, pregnancy and maternity, race, religion or belief, sex, and sexual orientation, or any other factor that might place an individual at a disadvantage
- h. make sure all consumers are provided with clear, written details of your agreements with them
- i. make sure that they have appropriate professional indemnity insurance cover in place and tell their professional indemnity insurer immediately if they are the subject of a formal complaint
- j. comply with the National Trading Standard
- k. Estate Agency Team Guidance on Property Sales under the Estate Agents Act 1979 (as amended):
 - k.1. Provide full and detailed information about fees and charges for their services. Fees must be quoted inclusive of VAT
 - k.2. Disclose any personal interest that they may have in any sale
 - k.3. Keep consumers promptly informed about any offers received
 - k.4. Handle consumers' money properly in accordance with the Estate Agents Act (EEA) 1979 as amended

Schedule 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 Alternative Dispute Resolution (ADR) to the property industry under the ADR Regulation 2015.

More information can be found at [https:// www.businesscompanion.info/en/quickguides/consumer-contracts/alternativedisputeresolution](https://www.businesscompanion.info/en/quickguides/consumer-contracts/alternativedisputeresolution)

The PRS offers redress to the following property professionals:

- | | |
|-------------------------------|--|
| a. Company/private landlords | i. Property developers |
| b. Cleaners/private landlords | j. Property finders |
| c. Builders | k. Relocation professionals |
| d. Gardeners | l. Surveyors |
| e. Handyman | m. Auctioneers |
| f. Inventory providers | n. Tenant referencing providers |
| g. Removal companies | o. Utility (and other service) brokers |
| h. Painters/decorators | p. Others, on request and confirmation |

The following definitions apply to property professional members:

"Complainant" is defined as a consumer of services provided by a property professional who is our member

(May be referred to in our documents as the person making the complaint)

Property professionals who join the PRS are expected to:

- tell their consumers that they are our member
- display our window sticker in all their offices and display our logo and link on their website

- c. provide information about us to all consumers when signing any agreement, including how to make a complaint to us at the point the agent receives any formal complaint from the consumer
- d. provide a copy of their internal complaints process to all consumers or use the model complaints process available on our website
- e. consider any special measures required for vulnerable consumers when informing and explaining their practices and procedures
- f. act in line with any code/s of practice the member has signed up to
- g. comply, keep up to date with and act in accordance with all relevant legislation;

While property professional members are not legally required to agree to resolve a complaint using our process, where a member decides not to agree to use our process, our compliance officer will be advised and will investigate.

As our membership is there to deal with complaints, the compliance officer may recommend their membership is cancelled due to their lack of co-operation with us.

Schedule 4

Definitions

"Average Consumer" A consumer who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and any language factors. It is someone who takes reasonable care of their own interests. This definition can change depending on the target of a particular business or of a marketing campaign. The average consumer will then relate to a member of that target group. A full definition can be found in regulation 2 of the Consumer Protection from Unfair Trading Regulations 2008.

"Award" A payment detailed in a decision.

"Client Money Account" A secure ring-fenced account our member uses only for holding client money.

"Client Money Protection Scheme" A mandatory membership scheme which guarantees to cover any client money which is misused or stolen by the owners of an agent/member's business.

"Complainant" A consumer who wants to make a formal complaint about the services provided by agents carrying out letting agency work, property management work or estate agency work.

(May be referred to in our documents as the person making the complaint)

"Complaint" Communication, in writing, from the consumer to the member expressing their dissatisfaction with the service provided.

"Consumer" The Property Redress Scheme is also open to other property professionals. Any customer who uses the service provided by the property professional is considered to be a 'consumer'.

"Default Decision" The decision made when the member has not responded or cooperated with the PRS or has not sent in their rebuttal statement and/or evidence when requested, and will be the scheme's final decision. A member cannot request a review of a default decision.

"Early Resolution" A process where the case assessor, having received all the evidence, will talk through the issues with the member and the person making a claim, to see if a mutually acceptable 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.

“Memorandum of Understanding” Both Government authorised redress schemes share information when a property agent is expelled for not complying with a decision. The property agent will not be able to join the other scheme or re-join their current scheme, until they comply with the outstanding decision and pay any amount/s awarded to the Complainant along with any penalty fees due.

“Professional Indemnity Insurance” Professional indemnity insurance covers agents for compensation they have to pay clients because of problems with advice given or work issues raised, including compensatory damages and claimant’s costs awarded against the agent. It should also cover any of the agent’s legal defense costs. It may also pay for mistakes to be corrected and reimburse agents for fees that clients might refuse to pay.

“Review” A formal re-assessment of the proposed decision on the grounds of any error in fact or law with the intention of changing the decision, if proven. This does not apply to default decisions or final decisions.

“Subscription” The period of paid membership with the PRS is usually 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 spent by the person making the complaint to the member and with the PRS.

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

An error in administration will only be considered if it materially affects the intention of the decision.

“Final Decision” The PRS’s final decision having considered any review request, of the proposed decision, made by either party. If the final decision is accepted by the person who made the original complaint, 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).

Property Redress Scheme

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 0333 321 9418

 info@theprs.co.uk

 www.theprs.co.uk

*HF Resolution Ltd
is a subsidiary of
HFIS PLC*



Scheme Authorised by:



Ministry of Housing,
Communities &
Local Government

**NATIONAL
TRADING
STANDARDS**
Estate and Letting
Agency Team
Protecting Consumers
Safe Guarding Businesses

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