



Department for
Communities and
Local Government

The Redress Schemes for Lettings Agency work and Property Management Work

Draft Conditions for Approval

Subject to change

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If you have any enquiries regarding this document/publication, email contactus@communities.gov.uk or write to us at:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/CommunitiesUK>

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Article 4 establishes the conditions that must be satisfied before the Secretary of State may approve a redress scheme. The table below sets out factors that would indicate those conditions had been met.

Conditons which must be satisfied before approval may be given	Factors that would indicate the condition has been met
(a) The establishment or appointment of an independent scheme administrator	<p>The scheme operation must be and be seen to be impartial and free from bias.</p> <p>The scheme administrator must not be appointed by those who are subject to investigation by the scheme. This does not exclude minority representation of those subject to investigation on the appointing body, provided that the body is entitled to appoint only by majority decision. The procedures of any scheme must ensure that no appointments may be made unless the representation on the Board at the meeting making an appointment is such that those who are subject to investigation are in the minority at that meeting.</p> <p>The scheme administrator should be appointed for a period of office for sufficient duration to ensure the independence of his actions and not be removable from his duties without just cause. The appointment should be for a minimum of five years and may be renewable. The renewal process should not undermine or compromise the office holder's independence</p> <p>The remuneration of the Ombudsman should not be subject to suspension or reduction by those subject to investigation, but this does not exclude their minority representation on the body authorised to determine it.</p> <p>The scheme administrator should not, during the three years prior to assuming his present function, have occupied a position in the industry to be regulated, remunerated or otherwise, which may cast doubt about his independence from the industry and the ability of the scheme to reach impartial decisions.</p> <p>The scheme administrator's appointment must not be subject to premature termination other than for incapacity or misconduct or other good cause. The grounds on which dismissal can be made should always be stated. Those subject to investigation by the scheme should not be entitled to exercise the power to terminate</p>

	<p>the scheme administrator's appointment, but this does not exclude their minority representation on the body which is authorised to terminate.</p> <p>The scheme administrator should be required to report to a body independent of those subject to investigation, but this does not exclude their minority representation on that body. At least one member of the reporting body should be from an organisation representing consumers. The body should also be responsible for safeguarding the independence of the scheme</p>
(b) the manner of becoming and ceasing to become a member of the scheme	<p>The provisions of the scheme must set out the circumstances in which an agent will be refused membership or expelled from the scheme:</p> <ul style="list-style-type: none"> • Membership should be open to all letting and property management agents in England and membership requirements should not unfairly restrict access to the scheme eg a compulsory requirement to sign up or comply with a code of practice • Only agents who have been expelled from a scheme and have not met the requirements for reinstatement, or those who have been banned by the enforcement body can be excluded from membership. • Only agents who have failed to comply with the terms of the scheme (for example, by failing to pay fees or failing to comply with the ombudsman's decision) may be expelled from the scheme.
(c) complaints that may be made under the scheme (which may include complaints about non-compliance with the provision of a voluntary code of practice or other document)	<p>The provisions of the scheme must set out the matters about which complaints may be made, including who may make a complaint.</p> <p>The scope of the matters which may be investigated and determined and the criteria to be used to determine whether a complaint should be investigated. This should include how the scheme will deal with complaints which have not used an agent's own complaint system including where an agent does not have an internal complaints procedure.</p> <p>The scope of investigation of complaints concerning non-compliance with voluntary codes of practice or other documents with which scheme members have individually</p>

agreed to comply.

Factors that demonstrate good practice in letting and property management work include

- Offering equality of professional service to any person, regardless of their race, religious belief, gender, sexuality, age, disability or nationality.
- Taking special care when dealing with consumers who might be disadvantaged because of their age, infirmity, lack of knowledge, lack of linguistic ability, economic circumstances or bereavement and avoiding any course of action that can be construed as harassment.
- Responding to clients in an appropriate time.
- All fees and charges are clearly stated and are drawn to the attention of the client at the start of the process
- Fees being proportionate to the level of service provided
- All communications (oral and written) use plain and intelligible language and comply with the Unfair Terms in Consumer Contracts Regulations 1999
- Ensure published material complies with the Consumer Protection from Unfair Trading Regulations 2008 and that all reasonable steps are taken to ensure that all statements about a property (oral, pictorial or written) are accurate and not misleading.
- Treating clients money in an appropriate manner
- Bringing to a clients attention critical information (including but not limited to any obvious repairs or maintenance issues which appear necessary before a property can be let)
- Keeping appropriate permanent records

<p>(d) where the redress scheme applies to property management work, complaints about the failure to comply with any provision of a code of practice for the time being approved under section 87 Leasehold Reform and Urban Development Act 1993</p>	<p>The scope of investigation of complaints concerning non-compliance with the statutory codes of practice.</p>
<p>(e) the ombudsman's duties and powers in relation to the investigation and determination of complaints (which may include power to decide not to investigate or determine a complaint);</p>	<p>The ombudsman is required to make reasoned decisions in accordance with what is fair in all the circumstances, having regard to principles of law and good practice including the principles of good administration. The ombudsman may take into account such factors as he considers relevant in accordance with such practice including but not limited to any inequitable conduct or maladministration.</p> <p>The ombudsman alone (or an appointed deputy) must have the power to decide whether or not a complaint is within the ombudsman's jurisdiction. If it is, the ombudsman (or an appointed deputy) must have the power to determine it.</p> <p>Save as provided by law, the scheme administrator must have the authority to request and receive all necessary information and documents from those being investigated.</p> <p>The scheme administrator should be entitled but not obliged to disclose to the complainant or to the person being investigated such information, documents and other material as shall have been obtained by the ombudsman from the other of them unless there shall be some special reason for not making such disclosure, for example, where sensitive information is involved or disclosure would be a breach of the law.</p> <p>There should be provision for complainants to make oral representations as well as written ones.</p>
<p>(f) the redress which the ombudsman may require members to provide to complainants, which must include ...</p> <ul style="list-style-type: none"> • providing an apology or explanation; • paying compensation; 	<p>The level and applicability of awards must be proportionate to the offence</p>

<ul style="list-style-type: none"> • taking such other actions in the interests of the complainant as the ombudsman may specify. 	
<p>(g) the enforcement of any requirement to provide redress imposed on a member in accordance with the scheme (which may include power to expel the member from the scheme);</p>	<p>There must be procedures in place to ensure that decisions and the scheme's rules are complied with.</p> <p>There must be procedures for non-compliance with decisions and the scheme's rules which include a specified range of sanctions, for example warning letters, fines, expulsions from the scheme, etc.</p> <p>The procedures must be fair to the member agent and only allow expulsion for serious issues of non-compliance. Reasons for decisions must always be provided to members.</p> <p>The procedures used to expel a member agent must:</p> <ul style="list-style-type: none"> • Be set out clearly and notified to the member at the time of joining the scheme. • Provide that other sanctions will be adopted in preference to expulsion where appropriate and likely to be effective. Expulsion should be for only the most serious of cases. • Provide that the person considering expulsion has not been involved in any decisions or issues upon which the expulsion is based. • Decisions to expel must include the earliest date the agent can apply for readmission and what it is necessary for the agent to do to obtain readmission. • Provide details of the process to appeal or review the decision. • Provide procedures for application for readmittance after a specified period of time following expulsion
<p>(h) the manner in which complaints about the operation of the scheme may be</p>	<p>These procedures should relate only to the service provided by the scheme when dealing with the case and not to the decision itself.</p>

<p>made by members of the scheme and by persons who have asked the scheme to investigate a complaint;</p>	<p>The final decision on the complaint must be made by a person not previously involved in the determination of the complaint and with sufficient authority to direct how the issue may be resolved.</p> <p>The complaint process should be considered reasonable both in terms of the information which must be provided and in the time taken to consider the complaint</p>
<p>(i) the provision of information by the scheme administrator to ...</p> <ul style="list-style-type: none"> • persons exercising functions under other approved schemes or government administered redress schemes; • persons exercising functions under other consumer redress schemes; and • any other person exercising regulatory functions in relation to— <ul style="list-style-type: none"> ○ the activities of persons engaging in lettings agency work, where the scheme applies to lettings agency work; ○ (ii) the activities of persons engaging in property management work, where the scheme applies to property management work. 	<p>Agreements such as Memoranda of Understanding or similar should be made with other organisations as appropriate.</p> <p>Information provided to regulatory bodies must include the names and details of the parties involved.</p> <p>Procedures ensuring compliance with the Data Protection Act 1998 must be adopted.</p>
<p>(j) the making and publication of annual reports on the operation of the scheme.</p>	<p>Prepare and publish an annual report to include details of its investigations and decisions.</p> <p>Publish annual accounts</p>

Satisfactory provision

Article 5 of the Order establishes what matters the Secretary of State must consider when deciding whether a scheme has made satisfactory provision for the conditions in article 4. Factors relevant to satisfactory provision are below,

Matters the Secretary of State must have regard to:	Factors that would indicate that satisfactory provision has been made
<p>the interests of members of the scheme;</p> <p>where the scheme applies to lettings agency work, the interests of prospective landlords and prospective tenants;</p> <p>where the scheme applies to persons who engage in property management work, the interests of—</p> <ul style="list-style-type: none">○ any person (C) who instructs another person (A) to engage in property management work, and○ (ii) any person with a relevant tenancy who occupies a dwelling-house in premises in relation to which C has instructed A to engage in property management work;	<p>The scheme must be adequately staffed and funded in such a way that complaints can be effectively and expeditiously investigated and resolved and to allow the scheme to function impartially, efficiently and appropriately.</p> <p>Staff have a good working knowledge of the law relating to lettings and or management of residential property, the law of contract and all relevant legislation.</p> <p>The scheme must include reasonable timescales for adjudicating on complaints, including a timescale for a decision to be made.</p> <p>The scheme administrator should be able to demonstrate that it is likely to be able to attract and retain a sufficient number of members to enable it to offer a viable alternative to other schemes in existence and ensure that it operates in the interests of members and consumers.</p>
<p>generally accepted principles of best practice in relation to consumer redress schemes;</p>	<p>The scheme's operation and its procedures must be transparent. For example, the scheme should publicise:</p> <ul style="list-style-type: none">• The scheme's legal constitution, governance and funding arrangements

- The types of dispute which may be referred to the scheme.
- The rules governing the referral of matters to the redress scheme.
- The decision making arrangements.
- The rules serving as a basis for decisions.
- The level and applicability of the awards.
- The provision for securing expert advice to assist with an investigation.
- The jurisdiction, powers and method of appointment of any ombudsman.

Factors which demonstrate transparency include

- Making its decisions and the reasons for them transparent. The names of the parties do not need to be publicised but the content of the complaint and the decision could be.
- In all cases investigated, notifying in writing the decision and the reasons for it to the parties concerned.
- Ensuring that complainants are provided with clear, comprehensible, and accurate information on the procedure including the process for initiating a complaint, duration of the procedure, possible outcomes, avenues for appeal or review of the decision, and whether the outcome is binding.
- Ensuring that wherever possible, complainants are provided with information or help other than legal advice in the completion of necessary forms and documents (for example through the use of standard forms to facilitate the submission of necessary documents).

Publishing the scheme to consumers and to existing and potential members so that:

	<ul style="list-style-type: none"> • Consumers are aware of the scheme at the point at which they make a choice to use an agent. <p>The scheme should be easily accessible to all those entitled to use it. Factors which demonstrate this include:</p> <ul style="list-style-type: none"> • Straightforward (ie not unduly rigid or formal) procedures for complainants to understand and use • no charge for those complaining to the scheme • Encouraging members to publicise the scheme so that consumers are aware of the scheme at the point at which they choose to use that member. • Ensuring the scheme is easily accessible to complainants without the need for legal representation or assistance. • Ensuring that the needs of disadvantaged or vulnerable consumers are considered so that they, or their representatives, can access the scheme easily. • Enabling the complainant the right to be represented or assisted by a third party at all stages of the procedure.
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Article 7 of the Order sets out the condition with which scheme administrators must comply.

Matters the Secretary of State must have regard to:	Factors that would indicate that satisfactory provision has been made
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The scheme administrator must provide such information as the Secretary of State may reasonably require on the operation of the approved scheme.

Performance indicators on the scheme's operation to be agreed with DCLG.

Scheme administrator to provide information on customer satisfaction surveys and performance indicators to DCLG at specified intervals.

Scheme administrator must agree to a comprehensive review of the scheme operation after a year of operation.

The annual report must contain the following information:

The data for 'residential leasehold' and 'lettings' must be kept distinct and clearly identified as such. In addition for each category data for England only must be provided. Data must include at a minimum:

- number of complaints,
 - number of complaints that were formally reviewed, closed or where representation was taken,
 - reason complaint referred to scheme, (deadlock, unresolved by in-house complaints after 8 weeks, scheme administrator's discretion)
 - type of complaint by topic (poor service, unfair business practices, fees and charges, security deposits, repairs and maintenance, other, residential leasehold must also include complaints referring to shared area management),
 - person who complained (eg: Tenant, Landlord, Leaseholder, Freeholder)
 - number of decisions upheld and not upheld by topic
 - upheld decisions by type of penalty (financial, non-financial, both, expulsion),
 - Total financial penalty awarded over the year.
- Annually published data must reflect percentage changes, year on year, for the complete list above.
- Pertinent trends should be highlighted by cross referencing categories eg Number of complaints upheld published to reflect whether complainant was a

	<p>landlord or a tenant. Whilst the precise nature of cross referenced publication is left at the scheme's discretion, it is expected that no trend which is evident will be withheld from publication.</p> <ul style="list-style-type: none">• Schemes should also look to publish details of complaints received which fall outside the schemes remit where there are particular trends.• All information must be provided in a uniform manner by all schemes, reflecting the same units of analysis and similar, if not the same, categories within those units. This exercise must be undertaken regardless of sample size, to enable comparisons to be made.
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