

Memorandum of Understanding (MOU)
between
The Property Ombudsman
The Property Redress Scheme

1. The Parties

The Property Ombudsman (TPO) scheme provides a facility for the independent and impartial resolution of disputes between any small commercial business, charity or consumer (who may be an actual or potential buyer, seller, landlord, leaseholder, lessee or tenant of property or who has otherwise become involved) and firms that are directly members of the scheme or who are subject to the Ombudsman's jurisdiction, in relation to the carrying out of relevant estate and/or letting agency and/or property management work by those firms in the UK, Channel Islands and the Isle of Man. The Property Ombudsman is a private, not-for-profit company limited by guarantee. A Council which is independent of the member firms appoints the Ombudsman and sets the Ombudsman's Terms of Reference.

The Property Redress Scheme (PRS) is a consumer redress scheme for the property industry. Property Agents and Professionals can join to fulfil either their statutory or voluntary consumer redress requirements. The PRS offers an independent and impartial dispute resolution process whereby we assess the case and try to help the parties reach agreement in the first instance. If this is not possible then the Head of Redress will make a binding decision on the resolution of the complaint. The PRS operates under its Terms of Reference and has appointed an Advisory Council which is an independent Council of industry representatives. The Advisory Council oversees and scrutinises the scheme, its processes and holds the Head of Redress to account.

The Property Ombudsman and the Property Redress Scheme ('the two schemes') offer independent dispute resolution to consumers and promote best practice by their participating companies/members.

2. The purpose of this MOU

The two schemes have agreed to establish this MOU with the aims of ensuring where relevant and appropriate and taking into account any statutory obligations:

- the seamless redirection of complaints to the correct scheme;
- consistency of treatment of cases;
- ongoing communications between the two schemes;
- establishing what information is needed to further the effective resolution of cases; and
- the sharing of information, including membership information on participating companies/members where appropriate, subject to any legal constraints including the need to respect personal or commercial confidentiality, to help enable the organisations to effectively resolve cases and fulfil their respective functions.

3. Terms of Reference

The two schemes recognise their respective Terms of Reference. The Property Ombudsman's Terms of Reference are attached at Annex A. The Terms of Reference for the Property Redress Scheme are attached at Annex B. The Terms of Reference are kept under review by the respective governing bodies.

4. Codes of Practice

Member firms of The Property Ombudsman have agreed to adhere to The Property Ombudsman Code of Practice; and all legal and regulatory obligations. The Code of Practice for Residential Sales Agents and that for Residential Letting Agents have been approved by the Chartered Trading Standards Institute (CTSI) under its Consumer Codes Approval Scheme. Separate Codes in relation to the Scottish market have also gained CTSI approval.

The Property Redress Scheme will consider any relevant statutory code of practice, and legal or regulatory obligation relating to the work a Member undertakes and also any Code of Practice that a Member has voluntarily entered into as a result of its membership of another organisation.

5. Provision of Information

Information is available through the publication of information by the two schemes in their respective Annual Reports, websites and other material. This includes the publication of statistics about the number and type of complaints, the results of customer and member satisfaction surveys and anonymised summaries of individual complaints to give a broad overview of the complaints considered and determined.

Where circumstances will benefit the complainant or it is in the public interest, they may exchange other information necessary to bring about a resolution to a dispute. The exchange of information is subject to any statutory restriction including data protection. In addition to this, the two schemes where appropriate or where required by any statute will exchange information of a statistical nature regarding enquiries and complaints. Information will also be exchanged about Member firms / participating companies where necessary in the public interest.

6. Transfer between Schemes

The two schemes agree to notify each other of any company within their schemes which fails to comply with an award within a reasonable time or becomes subject to any disciplinary procedures. Where such instances occur, any application by that company to join another scheme will be put on hold by the receiving scheme until confirmation is provided by the first scheme that all obligations under that scheme have been fulfilled. If the company in question remains in default to the first scheme it will not be accepted into membership of the other scheme.

If a company makes an application to one scheme having previously been a member of another, the receiving scheme will seek information from the first scheme to establish whether there are any outstanding complaints or issues. If there are then:

- (i) if the company has already defaulted on an award, as above the application will be put on hold until the award is paid;
- (ii) if there is no default but there are ongoing complaints made before membership of the first scheme ended (and until such time as the time limit for making complaints to the first scheme has expired), membership of the new scheme will only be given temporarily;
- (iii) the first scheme will notify the new one if the company then later fails to pay any award and the new scheme will then terminate membership; and
- (iv) when a company has changed redress schemes in the normal course of business (i.e. there is no award pending) and a complaint is raised where issues occurred during membership of the previous redress scheme, the redress scheme in force at the time the complaint is made to the company will accept responsibility for that complaint.
- (v) when a company has refused to admit a firm to Membership, for example because they have been identified as having characteristics of a phoenix company.

7. Expulsion from Scheme Membership

- (i) Expulsion of agents or refusal to admit to Membership is appropriate if:
 - the agent has been banned from or,
 - the agent has refused to pay an award (issued by either of the schemes), and any appeal against that award has been dealt with.
- (ii) Redress schemes may invite agents who dispute awards to pay 'without prejudice'. If an agent has been expelled or refused membership, redress schemes should provide NTSEAT with full details of the agent involved, including which discipline(s) the agent is involved in. It is then for the regulator to enforce any failure to belong to a redress scheme. Redress schemes will refer all such cases (lettings and sales) to NTSEAT who will:
 - deal with sales agents in conjunction with local Trading Standards and, where necessary, take action themselves
 - refer lettings and management cases to the appropriate local Trading Standards or LA Housing team for action as appropriate (no enforcement action possible by NTSEAT, as out of scope).
- (iii) Agents who make false declarations on their applications for membership should be referred to NTSEAT. Redress schemes cannot refuse membership in such circumstances, but may inform the agent that they will be referred to the regulator.
- (iv) Where a company has been expelled as a result of a sales breach and also operates a letting agency (and vice versa) the company will be expelled from (i.e. not able to retain registration) the Scheme in its entirety, i.e. for both disciplines. The scheme responsible for expulsion will provide consumer

protection by (i) publicising the expulsion via their website/appropriate media outlets, (ii) by informing appropriate property portals (e.g. ZOOPLA/Rightmove), (iii) the Tenancy Deposit Scheme and (iv) NTSEAT and Trading Standards.

- (v) The terms of membership of each scheme should provide explicit reference to and clarity on the unacceptability of operating a “phoenix” company. That is to say that expelled companies¹ will not be re-admitted to the scheme on the basis of the same Directors² forming a new company. This information is to be shared between both schemes to enable other schemes to refuse membership. The only exception to these circumstances is if the new company has fulfilled all of the obligations placed upon the expelled company by the relevant scheme.

8. Review

The two schemes will regularly:

- review this MOU; and
- discuss approaches to case handling and resolution.

Nothing in this MOU precludes the two schemes from meeting on an ad hoc basis or from discussing cases (subject to statutory restrictions including that of data protection).

9. Addendum to the MOU: Withdrawal of Ombudsman Services:Property

OS:P will continue to accept complaints from member firms whilst their membership with OS:P is current, up to and including 6 August 2018. Any complaints received after a member firm transfers to one of the other schemes (even if this complaint relates to an issue which arose during the firm’s membership of OS:P) will be dealt with by whichever scheme the agent is registered with at the date of receipt of the complaint. Once a firm has transferred from OS:P to either TPO or PRS they will be subject to the agreed MOU if they subsequently transfer between PRS and TPO after that time.

PRS and TPO will not accept any member transferring, where the OS:P member has an outstanding award or non-payment of case fee/subscription or was/is under investigation or suspension by OS:P until the award or non-payment is settled or their compliance process has been exhausted. On the settlement of the award, or payment of case fee/subscription, or a resultant appeal process overturns the prohibition under former versions of this MOU to which OS:P was party, either PRS or TPO can accept membership in line with their terms of reference.

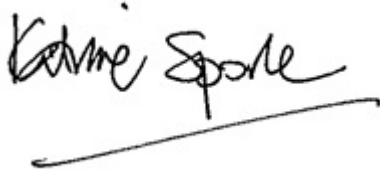
To avoid gaps in Consumer Redress being available, OS:P can advise an Agent to pay “without prejudice” and join PRS or TPO. In such cases OS:P and the receiving

¹ The term ‘company’ has been used to cover all forms of business legal entities including, but not limited to sole traders, partnerships and companies.

² The term ‘director’ has been used to cover those individuals with responsibility for ownership and control of the business. Consideration will be made on a case by case basis.

scheme will provide NTSEAT with full details of the Agent involved as set out in 7(ii) above.

Signed for the Property Ombudsman

Handwritten signature of Kevine Spore in black ink, written in a cursive style. The signature is positioned above a horizontal line.

Date: 18 June 2018

Signed for Property Redress Scheme

Handwritten signature in black ink, appearing to be initials 'S' followed by a stylized 'H' and a long horizontal stroke. The signature is positioned above a horizontal line.

Date: 18 June 2018