PRS Property Redress Scheme

Consultation response
October 2021

Ministry of Justice

Dispute Resolution in England and Wales

Call for Evidence

1. Drivers of engagement and settlement

An understanding of the drivers of engagement and settlement will enable the development of policies and procedures that ensure access to justice in a way that best meets people's needs. Existing evidence points to reasonable settlement rates for pre-hearing dispute resolution schemes.

1. Do you have evidence of how the characteristics of parties and the type of dispute affect motivation and engagement to participate in dispute resolution processes?

The Property Redress Scheme

All property agents and professionals that carry out estate, lettings and property management work in the property industry have a legal responsibility to join an authorised redress scheme. The **Property Redress Scheme** is one of two providers (the other is The Property Ombudsman). Property agents and professionals agree to resolve complaints using our resolution process and agree to abide with our final decision when they are legally required to do so.

Participation in this dispute resolution process is therefore made compulsory for businesses. Business' awareness of the scheme and understanding of what it can do is generally higher as a result.

For consumers, using the scheme comes down to awareness of the scheme and understanding of what it can do.

PRS Mediation

With our mediation service, we are in the main instructed by landlords. This can cause tenants to question who we represent. We find that it is helpful to explain to tenants that:

- we do not act for one party vs the other, but are here to listen to both sides of the story
- there are no costs involved for tenants who agree to use the mediation service
- we will be able to guide both parties on what might be a reasonable settlement to their dispute – but are not here to tell the parties what to do
- any settlement that is reached is one that is consensual as opposed to a mandatory or imposed decision. Neither party will be required to accept a settlement or decision that they do not like.

Another factor to be considered is that not all 'actors' in a sector will be on the same playing field. For example the Housing Ombudsman predominately deals with entities which are publicly accountable such as local authorities or housing associations set up as charitable trusts. Their performance should be openly dealt with. However property agents and landlords are private entities and whilst their disputes in law are dealt with in public, their complaints dealt with by dispute resolution are determined in private and remain confidential to the parties – with the caveat of the obligations of such as the Property Redress Scheme to 'whistle blow' to enforcement bodies where serious matters occur. In a commercial, "industry pays environment" trust is paramount: if the sector thought that their every misdemeanour would be named and shamed, they would not see dispute resolution as something they should embrace. Neither would it drive a change in behaviour if it was merely something they are forced to comply with and they are hostile too.

2. Do you have any experience or evidence of the types of incentives that help motivate parties to participate in dispute resolution processes? Do you have evidence of what does not work?

What works

Our experience of operating the **Property Redress Scheme** and **PRS Mediation** shows that users want dispute resolution processes that are:

- easily identifiable
- easily understood
- easy to access
- free or cheap for consumers or small businesses
- able to deliver good outcomes swiftly and efficiently.

A feature of both of the schemes we operate is the **absence of any requirement for the parties to be advised by lawyers or represented**. As well as saving cost and time, this also brings increased access to effective dispute resolution outcomes; taking this approach counters imbalances in power, resource and experience.

This is also important because of the **need to build trust as a knowledgeable voice of authority** with those who use our dispute resolution services. It is important for us to position ourselves within the private rented sector – but also one that is impartial.

We also **ensure that the process is as collaborative as possible**. Our experience of operating both the Property Redress Scheme and PRS Mediation Service is that early contact with the parties, by telephone, is vital. This builds trust and understanding amongst combative parties and helps create a space where we can work with them not against them.

We also ensure that **the process offers a wide scope of possible solutions**. This increases the ability to actively engage the parties in finding the right solution for them. Unlike a court-based outcome, which typically results in a financial award, our dispute resolution processes can include non-financial awards such as the giving of an apology or requiring a member to carry out particular actions e.g. provide copies of documents.

What does not work

Our experience of operating our schemes has highlighted the following negative factors that can dissuade parties from using dispute resolution processes:

- Processes that incur cost for consumers
  - in the **Property Redress Scheme** there are no costs to the consumer for using the scheme – this reflects a consumer expectation that the costs of redress should be borne by the business complained about. Making any charges to the consumer is likely to act as a disincentive.
  - in **PRS Mediation** our experience is that some landlords will want the tenant to bear the cost of mediation. However we find that this also dramatically reduces the likelihood of tenants agreeing to take part in the process.

- Processes that incur significant cost for either party
  - We have referred in the previous paragraphs to the expectation amongst consumers that they will not be expected to meet the costs of dispute resolution.
  - Please see our answer to question 22 for a detailed explanation of the charges that apply to both of the schemes that we operate.

- Charges for the **Property Redress Scheme** are kept at a proportionate level that is reflective of the size of the business using the scheme. Businesses are given a choice between paying a lower annual subscription with complaint fees for each dispute raised, or a higher annual subscription with no requirement to pay complaint fees.
- **PRS Mediation** is free of charge in its initial stages, and costs to landlords are only raised more substantively where tenants agree to take part in mediation. Even at this stage, the vast majority of mediations cost less than £200 plus VAT.

- Processes that require the parties to be represented, submit detailed evidence to support their case, or seek expert evidence that is expensive to obtain
  - in both of the schemes that we operate, we have found that parties can be more reluctant to take part in the early resolution of disputes once they have been put to time trouble and expense of preparing and submitting evidence
  - in the **Property Redress Scheme**, we find that attempts to resolve the dispute early are most successful before both parties have submitted detailed evidence
  - in **PRS Mediation** we do not ask for detailed evidence to be submitted by either party. The mediator gains their understanding of the dispute, and what the parties hope to achieve as an outcome, by speaking with them and listening.

- Processes that are offered too late in the life cycle of a dispute
  - This follows from the points made in the previous paragraphs. The longer a dispute has gone on, it is likely that the parties will become more entrenched in their positions. The risk here is that the parties are less likely to engage in what they see as an alternative to a formal legal process – in other words, they are more likely to want to have their "day in court".

3. Some evidence suggests that mandatory dispute resolution gateways, such as the Mediation Information & Assessment Meeting (MIAM), work well when they are part of the court process. Do you agree? Please provide evidence to support your response.

Our own feeling on this is that using mediation as part of the court process is likely to be less effective. This is likely to be even more significant where the parties have got as far as submitting their case and all its supporting evidence before mediation is offered.

Our experience of operating our respective dispute resolution schemes shows that the parties are more likely to engage in the process, and reach a successful conclusion, the earlier that dispute resolution takes place.

4. Anecdotal evidence suggests that some mediators or those providing related services feel unable to refer parties to sources of support/information – such as the separated parents' information programme in the family jurisdiction – and this is a barrier to effective dispute resolution process. Do you agree? If so, should mediators be able to refer parties onto other sources of support or interventions? Please provide evidence to support your response.

In the **Property Redress Scheme**, information about sources of other support/information is made available to consumer complainants at the outset of the process (website, contact centre etc). We recognise the importance of how we deal with those aspects of a complaint that do not fall within our remit and are keen to manage expectations from the earliest opportunity. Similarly when a case is closed the complainant is referred to sources of other support or information to deal with any remaining aspects of their dispute that the PRS was not able to address.

PRS Mediation frequently deals with cases relating to rent arrears. Signposting the parties to other sources of support/information has been key to breaking down barriers. For example:

- mediation cases often involve tenants who find themselves in financial difficulty. Our experience has been that in some cases tenants are reluctant to agree to take part in mediation because they do not know when or if they will be in a position to be able to pay their rent arrears. We are currently exploring how we can support our mediation service with access to specialist financial guidance that can help tenants identify other sources of grant, loan, or benefit funding that may increase their ability to reach an agreement with their landlord and ensure the smooth continuation of their tenancy.
- we have also seen cases where a user's personal circumstances have made participation in the mediation process more challenging. We have, for example, made use of interpreters to overcome language difficulties, and signposted users to services such as https://www.pohwer.net/ where disability or illness makes participation more difficult.

In both schemes, we have found that taking this approach brings dividends in terms of building trust with users of the schemes – and more importantly, a human touch to what can be very distressing circumstances for parties to disputes.

5. Do you have evidence regarding the types of cases where uptake of dispute resolution is low, and the courts have turned out to be the most appropriate avenue for resolution in these cases?

In the **Property Redress Scheme**,

- the scheme cannot make awards in excess of £25,000 and we have, for example seen 'rent to rent' disputes where landlords' claims for unpaid rent exceed this, meaning that obtaining a court order for the full amount claimed becomes necessary
- we cannot accept complaints that fall within the jurisdiction of the First-Tier Tribunal (or in Wales, The Leasehold Valuation Tribunal) or the Courts – for example:
  - increases in service charges and estate charges
  - the fairness of charges applied in line with a lease/TP1
  - the quality of management services provided
  - consultation on major works and contracts

Whilst there is a clearly defined route to redress for disputes that the PRS cannot consider, the differences in remit can be frustrating for users.

In **PRS Mediation** the uptake of dispute resolution can be low where:

- tenants do not respond to the invitation to take part in mediation
- tenants have been advised not agree to anything and to wait for a possession order to be granted
- landlords are advised by solicitors that once they have served notice seeking possession on a tenant, mediation is not possible.

These are all factors that we seek to mitigate with good information about the scheme and signposting made available to users from the outset. That said, they also highlight the misunderstandings and misconceptions that can exist about what dispute resolution means in practice.

6. In your experience, at what points in the development of a dispute could extra support and information be targeted to incentivise a resolution outside of court? What type of dispute does your experience relate to?

As will be seen from our answers to previous questions, we consider that this needs to be provided as early as possible in the life cycle of a dispute.

Businesses using a dispute resolution process have a role to play in this. In the **Property Redress Scheme** for example, businesses that belong to the scheme are required to display details of their scheme to their customers. They are also required to include details about it in their complaints procedure and when dealing with consumer complaints.

Dispute resolution schemes themselves also have a part to play. In the **Property Redress Scheme** for example, information about how the scheme can resolve complaints quickly and cost-effectively is made available to consumer complainants (website, contact centre etc). Where complaints are then raised with the scheme, detailed information is provided about the scheme's remit as well as sources of other support/information to deal with aspects of the complaint that the PRS was not able to address.

In relation to how the time that has elapsed in a dispute can make resolution more problematic, please see our answer to question 2.

In relation to the targeting of information to incentivise a resolution, please see our answer to question 4.

In relation to the types of dispute that our experience relates to , please see the sections "About you" and "Please give us further information on your specialist area".

7. Do you have any evidence about common misconceptions by parties involved in dispute resolution processes? Are there examples of how these can be mitigated?

In the **Property Redress Scheme** we have seen a range of corporate, or commercial, attitudes amongst business towards voluntary dispute resolution. Most commonly:

- businesses who are sceptical about voluntary dispute resolution take the view that it costs them money and time unnecessarily
- they also tend to have a negative attitude towards dealing with complaints.

More enlightened businesses take the view that voluntary dispute resolution is a positive which can increase their revenue. They recognise that complaints are a key way to identify where things go wrong, and that learning from them can reduce the future cost of error.

We mitigate these concerns by ensuring that the scheme is not solely concerned with the resolution of individual disputes. We recognise that the scheme has a vital and proactive role to play in analysing dispute data to identify trends and improve standards in the private rented sector. Demonstrating the ability to do this - and highlighting the benefits of using schemes that are equipped to achieve this - plays in an important part in overcoming business scepticism.

We also recognise that in the **Property Redress Scheme** - which is based on a legal obligation for businesses to take part - the best businesses involved in the scheme will have low or no unresolved complaints. Adding value to these businesses in particular is crucial.

In **PRS Mediation** we see a number of misconceptions, the most common of which we set out below.

- **It only delays things**: we find that landlords often feel that mediation is an unnecessary step which only serves to delay them seeking a possession order or money judgement against a tenant with rent arrears. We mitigate this by explaining that:
  - using our mediation service takes between 10-15 working days on average (and compare this to court process times)
  - the court's pre-action protocols expect a landlord to show the attempts they have made to resolve their dispute before coming to court, and our mediation service helps them to do this
  - we have seen cases where it has been possible to recover rent arrears and even possession of the property without the need for court intervention.

- **You don't need a mediator to do it:** we see cases where landlords represented by letting agents are advised by their agents that they are able to negotiate with their tenants, making the use of a mediator unnecessary. We mitigate this by explaining that letting agents are not impartial or independent, and ultimately act for the landlord.

- **It's one-sided and dictatorial**: connected to the concern about impartiality is a concern that agreeing to the process means that the parties lose their autonomy over the outcome to the dispute.
  - We mitigate this by making it clear that the outcome to mediation is one that is consensual (the parties don't have to agree to anything that they don't like). It is also an outcome that both parties find attractive and suitable from their own perspectives.
  - We also explain that having a neutral third party involved can help the parties to see potential solutions that they might not otherwise see for themselves.

- **You can't always use it:** parties tell us that they have been advised by solicitors that it is not possible to use mediation once a notice seeking possession has been served.
  - We mitigate this by explaining to landlords that this is not true. In fact, the service of a notice seeking possession can be useful to focus the parties' minds before mediation is offered as an alternative solution.

- **It will be costly:** parties tell us that they have heard that mediation can cost several £00s or £000s.
  - We mitigate this by providing a low-cost mediation service (please see our answer to question 22 for an explanation of the charges that apply to our mediation service).
  - We also reassure tenants (who may themselves be in financial difficulty) that mediation will not incur costs for them.

- **It will be adversarial**: parties can be apprehensive about using mediation because of a fear that they will have to speak with, or see, the other party to the dispute.
  - We mitigate this by explaining to the parties that their dialogue with each other is through the mediator rather than directly with each other (mediation can be completed using 'Zoom' type meetings, with each party in a separate 'virtual' room, as well as by telephone).

- **They won't understand what your dispute is about:** We are also aware from operating both of our dispute resolution schemes, that parties can feel that the person making the decisions on their dispute will be distant, impersonal, and lack an understanding of the issues involved. We mitigate this by making far greater use of telephone-based contact with the parties at a much earlier stage in the process - our focus is to understand the root cause of the complaint and talk, listen and negotiate with both sides.

  In both of our dispute resolution schemes, we also make it clear to the parties that their dispute is being resolved by individuals who have detailed knowledge of the private rented sector as well

as the legal principles relating to the dispute. The process is as much about practical solutions that are specific to the types of disputes in which we specialise as it is about the law.

2. Quality and outcomes

We want to ensure that parties are supported to use the best processes. As well as measures such as engagement/settlement rates and the perceptions of parties, it is important that parties achieve quality outcomes i.e. problems can be resolved effectively, fairly, and with minimal cost and delay for parties.

8. Do you have evidence about whether dispute resolution processes can achieve better outcomes or not in comparison to those achieved through the courts?

In the **Property Redress Scheme**, we have seen the following examples of how it can achieve better outcomes or not in comparison to those achieved through the courts:

- examples of the types of transaction in which we become involved include landlords/tenants using letting agents, or freeholders/leaseholders using residential management companies. In these cases, it is vital to preserve the relationship since it will be continuing into the future.
- outcomes can include non-financial awards such as the giving of an apology or requiring a member to carry out particular actions e.g. provide copies of documents.

In the **PRS Mediation Service** we have seen the following examples of how it can achieve better outcomes or not in comparison to those achieved through the courts:

- mediation is made available to landlords when the tenant is still in the tenancy property
- mediation is less adversarial than litigation and can achieve resolutions which are consensual between the parties and not an imposed solution. This, again, is particularly important to the 'human' factors such as where a relationship between landlord or tenant will be continuing into the future.

There are two key points to highlight when comparing dispute resolution processes to the courts:

- Property disputes need experts. That said, most cases are specific to their facts and the law that applies is rarely contentious. For example, property disputes frequently involve the failure of management practices. These are best dealt with by those who understand the sector.
- Judges (whether in courts or tribunals) apply the law and decide cases on the basis of the parties' legal rights. Dispute resolution schemes such as ours take the law into account, but can also look at what will resolve disputes to the satisfaction of the parties, which can involve outcomes that a court could not provide

9. Do you have evidence of where settlements reached in dispute resolution processes were more or less likely to fully resolve the problem and help avoid further problems in future?

In the **Property Redress Scheme** we see many cases where the parties have ongoing relationships (for example leaseholders). When we resolve disputes, we are conscious of the need to help maintain that relationship. We have referred elsewhere in this response to our success with the early resolution of disputes. When we resolve disputes, we can include actions such as the giving of an apology or explanation, or actions such as providing documents. This type of resolution is not one that a court would be able to award or enforce – but is often what is needed to avoid future problems.

In **PRS Mediation** we see many cases where rent repayment plans are agreed between the parties, allowing a tenant to remain in their home and a landlord to agree to a phased repayment of arrears in addition to normal monthly payments.

10. How can we assess the quality of case outcomes across different jurisdictions using dispute resolution mechanisms, by case types for example, and for the individuals and organisations involved?

There is a risk that a confusing landscape for consumers, and also the existence of multiple bodies duplicating services in the same sector, could lead to firms choosing the path of least resistance in their development. Our experience however has been that co-operation and communication between providers can overcome this. In the private rented sector, the **Property Redress Scheme** and the Property Ombudsman adhere to a voluntary memorandum of understanding 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.
- 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.

11. What would increase the take up of dispute resolution processes? What impact would a greater degree of compulsion to resolve disputes outside court have? Please provide evidence to support your view.

Please see our answer to question 2 above, in relation to increasing take-up.

With regard to compulsion, we think that this will have a positive impact in terms of the many positive benefits of dispute resolution referred to elsewhere in this paper.

The concern however is that there needs to be effective signposting in place to direct disputants to suitable sources of guidance and redress. The courts have a role to play in this by providing more and better signposting information where a potential litigant is advised to use a dispute resolution process outside the court route.

12. Do you have evidence of how unrepresented parties are affected in dispute resolution processes such as mediation and conciliation?

Both of our schemes do not include any requirement for parties to obtain advice from, or be represented by, lawyers or similar. This saves cost and time, and also assists with levelling imbalances in power, resource and experience.

Both of our schemes make great use of early and direct communication with the parties by telephone. This brings three key outcomes:
(a) independent assistance to both sides (replacing lawyers).
(b) inputting and collecting relevant facts (not just relying on the parties to tell us); and
(c) making dialogue easier, quicker, and more effective.

Case officers are able to provide relevant information and assistance to both parties without becoming partisan. Building this relationship facilitates further communication between the parties with a view to assisting them to reach a settlement. The case officer is also able to ensure that both parties are treated fairly both in terms of the process and its outcomes. , especially where there is an imbalance of power or resource between the parties.

13. Do you have evidence of negative impacts or unintended consequences associated with dispute resolution schemes? Do you have evidence of how they were mitigated and how?

Property Redress Scheme: our experience of operating this scheme shows that where complainants use the scheme, there can be misunderstanding about what the scheme is able to consider, and what it can provide complainants in terms of solution. For example

- the scheme cannot make awards in excess of £25,000 and we have, for example seen 'rent to rent' disputes where landlords' claims for unpaid rent exceed this, meaning that obtaining a court order for the full amount claimed becomes necessary.
- we cannot accept complaints that fall within the jurisdiction of the First-Tier Tribunal (or in Wales, The Leasehold Valuation Tribunal) or the Courts – for example:
  - increases in service charges and estate charges
  - the fairness of charges applied in line with a lease/TP1
  - the quality of management services provided
  - consultation on major works and contracts

We mitigate these consequences using a range of methods:

- clear information about remit/authority and powers/outcomes made available to complainants both before and at the point of entry and using a range of avenues (web, telephone etc)
- at the start of the process, making first contact with a complainant by telephone to gain the best understanding of their complaint and manage their expectations
- at the close of the process,

PRS Mediation Service: this service is initiated by landlords who experience a problem with a tenant, for example, running into rent arrears. As a result we often find that tenants are apprehensive about using the service as they feel that we act on the landlord's behalf. We mitigate this using a range of methods:

- Using a range of methods to make initial contact with tenants when we first invite them to take part in mediation (email and letter, supported by a clear explanation of who we are, what we do, and how we can help).
- In particular , we have found it crucial to explain to tenants that the service is (a) free for them to use and (b) that they don't have to agree to any solution that they don't like.

14. Do you have evidence of how frequently dispute resolution settlements are complied with, or not? In situations where the agreement was not complied with, how was that resolved?

In the **Property Redress Scheme** 78% of our decisions were fully complied with in 2020, which means that consumers received the full amount they are owed. When rogue agents don't comply with our decisions, we work closely with the National Trading Standards Estates and Letting Agent Team and local Trading Standards to take robust action. In 2020 this resulted in 44 members being expelled and our biggest award was just under £20,000.

The Property Redress Scheme and The Property Ombudsman have an agreement to share information, with each other, when a property agent's membership has been cancelled. No agent in this position will be accepted by the other consumer redress scheme unless confirmation is provided by the first scheme that the agent has settled all responsibilities to the scheme and complied fully with any outstanding awards.

Where a member has been formally expelled from a redress scheme and has not been able to join another redress scheme for the reasons described above, if they continue to trade they would be doing so illegally. Trading Standards are the lead authority in enforcing this legislation and will investigate these matters. Members can be fined up to £5000 for any breach.

In **PRS Mediation** these elements of compulsion to abide with a settlement, failing which enforcement action arises, are not present. This means that mediators need to ensure the parties understand:

- mediation is an alternative to the legal route - and legal sanctions - such as the loss of a tenant's home and a court judgement affecting their ability to rent in future
- reaching a settlement can mean the difference between the above and a tenant's continued ability to remain in the property

When we make settlement agreements, we ensure that the parties (tenants in particular) understand that if the settlement is not honoured, any agreement and therefore any compromise is waived. Landlord may often accept a payment plan to clear rent arrears over a period of time, or a reduction in rent arrears in exchange for a tenant agreeing to leave the property. With these com[promise positions withdrawn, landlords are able to revert to pursuing their full entitlement from tenants through the legal/court route.

It is more difficult to give accurate data for how many of the settlement agreements we reach are honoured since we are reliant on landlords telling us. However we hear of few cases where settlement agreements are broken. Where this happens, as noted above, legal recourse may be the solution. However we are seeing an increasing number of landlords using the mediation service on more than one occasion – for example where a tenant's circumstances change and the parameters of a previously reached settlement agreement no longer apply. This is interesting in particular because it is showing that parties trust the process and are willing to return to it.

15. Do you have any summary of management information or other (anonymised) data you would be willing to share about your dispute resolution processes and outcomes? This could cover volumes of appointments and settlements, client groups, types of dispute, and outcomes. If yes, please provide details of what you have available and we may follow up with you.

Yes: we have detailed case management data for all this information, covering the **Property redress Scheme** and **PRS Mediation**

3. Dispute resolution service providers

We are keen to gain a greater understanding of the Dispute Resolution workforce and how they are currently trained, how standards of work are monitored and how quality is assured to users of their services.

16. Do you have evidence which demonstrates whether the standards needed to provide effective dispute resolution services are well understood?

Our experience points to these factors not being well understood.

For example:

- letting agents often state that they are able to mediate in cases of dispute but forget that, ultimately, they act in the landlord's best interests
- we receive feedback from landlords who have used solicitors to serve notice on tenants being advised that mediation cannot be used once this has happened
- we also received feedback from landlords who have been quoted hourly rates from law firms to complete dispute resolution which will rapidly incur costs of the same level as litigation

Many different qualifications and training routes available – please see our answer to question 19 below.

17. Do you have evidence of the impact of the standard of qualifications and training of dispute resolution service providers on settlement rates/outcomes?

Yes. In both our schemes, we use appropriately qualified dispute resolution professionals. However we also recognise that this is not just about pure legal or dispute resolution qualifications. We also require our case handlers to have relevant experience of the private rented sector.

As will be seen elsewhere in this consultation response, effective dispute resolution relies on building trust with the parties. Being able to demonstrate competencies, professional qualifications, and vocational experience as above is an important part of creating this environment

18. Do you have evidence of how complaints procedure frameworks for mediators and other dispute resolution service providers are applied? Do you have evidence of the effectiveness of the complaints' procedure frameworks?

19. Do you think there are the necessary safeguards in place for parties (e.g. where there has been professional misconduct) in their engagement with dispute resolution services?

For ease of reference we have answered these questions together.

We consider it fair to say that there needs to be increased oversight and scrutiny of dispute resolution bodies, particularly around delivery (time and quality).

Much is this is already in place with schemes such as the **Property Redress Scheme**, whose licence to operate includes such prescribed standards and key performance indicators, closely monitored by government and trading standards.

The situation is more delicate in mediation, where mediators are not regulated – their extent that their activities are not controlled, and anyone can call themselves a mediator. Some mediators have professional qualifications. Others do not.

Many mediators are members of professional bodies, which set standards for their members. Standards might for instance cover insurance, training and codes of conduct, or allow a professional body to take action if something goes wrong. However even a cursory internet search for such bodies show that there are disparate bodies in existence who take a disparate approach. To name some examples:

- The College of Mediators sets standards for its members, who work in all types of mediation.
- The Centre for Effective Dispute Resolution sets standards for disputes between businesses.
- The Civil Mediation Council (CMC) accredits and regulates its members who work across all civil disputes. Its members are expected to have passed accredited training courses, hold adequate insurance and publish a code of conduct.

Where these protections do not apply to a consumer using a mediation service, their only protection may be that they should be treated fairly and get a good level of service under the Consumer Rights Act 2015. Mediation is not a regulated legal service and is not covered by the Legal Ombudsman

- If a mediator is a member of a professional body, it could take action if something goes wrong.
- A mediator who is not a member of a professional body could state their terms and conditions and be insured – but not all mediators are.
- Mediators who are not members of a professional body will have code of conduct to follow (which means much less governance about how they must act).

20. What role is there for continuing professional development for mediators or those providing related services and should this be standardised?

We believe so. CPD enables individuals to reinforce and enhance their current skills while reducing any knowledge shortfalls. CPD also ensures that both academic and vocational qualifications do not become obsolete, allowing individuals to continually up-skill and develop their proficiencies.

21. Do you have evidence to demonstrate whether the current system is transparent enough to enable parties to make informed choices about the type of service and provider that is right for them?

We consider that there is more work to be done here.

It has been suggested, for the property sector in particular, that a single dispute resolution provider is the solution. Although there are desirable elements to this, we believe that the disadvantages outweigh the benefits. The creation of single provider means a potential single point of failure if backlogs and delays occur, and without competition to drive standards, there is no pressure on a single provider to change. Prescribed key performance indicators and the ultimate sanction of losing a contract may be there, but may not be enough in isolation. As an example, the Ministry of Justice is looking at possible alternatives to the Legal Ombudsman - https://www.lawgazette.co.uk/news/moj-set-for-talks-over-possible-alternative-to-legal-ombudsman/5109895.article

4. Financial and economic costs/benefits of dispute resolution systems

We are keen to get more evidence around the possible savings of dispute resolution processes. We seek evidence to help us understand the economic differences between dispute resolution processes.

22. What are the usual charges for parties seeking private dispute resolution approaches? How does this differ by case types?

Property Redress Scheme: our fee charging structure is shown below.

In the Property Redress Scheme we recognise that although the costs of operating the scheme are borne by member businesses, they have differing views on how they wish to pay for this. For this reason we offer a choice between paying a lower annual subscription and complaint fees on a case by case basis, or a higher annual subscription and no complaint fees. Residential leasehold block management cases are charged both an annual subscription and complaint fees since this reflects the increased complexity of this case type.

Option 1 - Enhanced Model	• Annual Membership: • Complaint Fees:	• £199 (plus vat) per application (head office/person) plus • £199 (plus vat) per extra branch if applicable • Nil (subject to a fair usage policy)
Option 2 - Entry Model	• Annual Membership: • Complaint Fees:	• £125 (plus vat) per application (head office/person) plus • £125 (plus vat) per extra branch if applicable • £ 100 (plus vat)
Option 3 - RLM Model This membership is for property agents that conduct residential leasehold block management as the main aspect of their business (approximately 80% of all activity).	• Annual Membership: • Complaint Fees:	• £200 (plus vat) per application (head office/person) plus • £1 (plus vat) per extra branch if applicable • £200 (plus vat) for property management complaints • £100 (plus vat) for sales and lettings complaints.

PRS Mediation Service: our fee charging structure is shown below.

Asking us to help	After being instructed by a landlord, we contact the tenant to see if they want to take part	This part of the process is free of charge
	Where a tenant chooses not to take part, we will produce a report for the landlord showing the steps we have taken. They can use this report as part of subsequent legal proceedings.	• £25 plus VAT
Reaching an agreement	If the tenant does want to take part, we work with both parties to put together a proposal. For a typical rent arrears case, this usually means a rent repayment plan which avoids the need to go to Court. We expect a typical mediation to be resolved in 1-2 hours of discussion, over roughly 10 working days – but often sooner if the circumstances allow. We will record the agreement reached in a legally binding document signed by both parties.	• £200 plus VAT
	Where no agreement can be reached, we will produce a report for the landlord showing the steps we have taken. They can use this report as part of subsequent legal proceedings.	• There is no additional charge for this part of the process
	Some cases can be more complex and time-consuming and we reserve the right to charge an additional hourly mediation fee. We confirm the landlord's agreement to this before incurring any additional charges.	• £100 plus VAT per additional hour

Vacant possession obtained	If the mediation agreement reached results in the tenant leaving the property, an additional charge (plus VAT) is payable, based on the total amount of outstanding rent arrears This reflects the additional complexities and work involved in seeking agreement for the tenant to leave the property voluntarily.	• up to £7,000: £200.00 • £7-15,000: £400.00 • £15-25,000: £600.00 • £25-35,000: £800.00 • £35-50,000: £1,000.00 • £50-100,000: £1,500.00 • Over £100,000: £2,000.00

23. Do you have evidence on the type of fee exemptions that different dispute resolution professionals apply?

No.

24. Do you have evidence on the impact of the level of fees charged for the resolution process?

Property Redress Scheme: this resolution process is initiated by complainants who are the customers of estate agents, letting agents, and property management companies. It is our experience that these complainants do not consider they should be charged any fees. Complainants view this 'business pays' as a necessary condition of using the scheme and a reflection of business taking responsibility for its standards and delivering professionalism.

From the perspective of businesses, there is an acceptance that they must bear the costs of operating what is a mandatory (statutory) scheme. However we recognise that although the costs of operating the scheme are borne by member businesses, they have differing views on how they wish to pay for this. For this reason we offer a choice between paying a lower annual subscription and complaint fees on a case by case basis, or a higher annual subscription and no complaint fees. Residential leasehold block management cases are charged both an annual subscription and complaint fees since this reflects the increased complexity of this case type.

The scheme's terms of reference include a 'fair use' policy so that members on the enhanced subscription model will be returned to the entry subscription model where their complaint volumes are excessive (thus adopting a 'polluter pays' approach).

PRS Mediation Service: the drivers in this model operate differently. As the party initiating the resolution process, landlords most commonly expect not to be charged any fees. For this reason, the costs of the initial stages of the process are kept to a minimal level. Where tenants consent to take part in mediation, more substantive charges are payable by the landlord.

We have seen an interesting change in perception amongst landlords since the PRS Mediation Scheme was launched in 2020 (during lockdown). At that time, landlords were much more reluctant to pay any costs (or to compromise on the amounts they claimed). Increasing notice periods, and lengthening court waiting times have since meant that landlords are more open to paying the costs of mediation once they appreciate that the process is a significantly less expensive - and much quicker - alternative

to court action. That said, this realisation amongst landlords is dependent on education and explanation from the scheme before landlords use the service.

As a counterpoint to this, although we offer the option to continue with mediation where a settlement cannot be reached within the standard mediation fee, it is rare for landlords to agree to this option. This highlights that landlords expect the costs of mediation to be low.

Most commonly, landlords using our mediation service have arrears of less than £15,000 – meaning a cost of up to £600 plus VAT. The time and cost of legal proceedings can easily be significantly more than £2,000 – with an increasing rent arrears debt along the way.

Tenants, almost universally, do not expect to bear the costs of mediation. Whilst this is likely to be a reflection of tenants generally expecting landlords to pay for this, there is an additional driver here where tenants facing rent arrears are themselves in financial difficulty. Landlords, on occasion, ask us to invite tenants to meet, or contribute to, the costs of mediation – however it is our experience that doing so almost certainly results in tenants refusing to take part in the process from the outset.

25. Do you have any data on evaluation of the cost-effectiveness or otherwise of dispute resolution processes demonstrating savings for parties versus litigation?

The **Property Redress Scheme** awarded over £453,000 in compensation to complainants, and the average award was £2,696.31.

Our charging structure is set out in our answer to question 22 above. As can be seen, costs are both modest and proportionate since they are reflective of the size of a business (branch numbers). As has also been seen, there are no charges to the consumer for using our service.

In the **PRS Mediation Service** the vast majority of our cases where a successful mediation agreement is reached cost the landlord £200 plus VAT and cost the tenant nothing. They are solved in, on average, 10-15 working days. These can be compared to cases where it has been necessary for landlords to seek either possession orders and/or money judgement orders against tenants. We have seen backlogs in the court for possession orders in particular exceeding 12 months, and landlords facing costs in excess of £2.000 to obtain them.

Both schemes and their respective charging approaches reflect significant savings compared to the cost of litigation.

5. Technology infrastructure

We are interested to learn what evidence informs the potential for technology to play a larger role in accessing dispute resolution. Although we are aware of many domestic and international platforms, we must continue learning from new and novel approaches to digital technology that can remove barriers to uptake, improve the user experience, reduce bureaucracy and costs, and ultimately improve outcomes for parties.

26. Do you have evidence of how and to what extent technology has played an effective role in dispute resolution processes for citizens or businesses?

In the **Property Redress Scheme** we use an online system which enables:

- complainants to submit details of their dispute
- the business complained about to submit their response to the dispute
- both parties to submit and see each other's case and evidence.

The system also enables us to communicate with each partly directly using the online portal – thus providing a single, joined up, platform that both parties can use to access all aspects of the dispute.

In **PRS Mediation** we have used two systems. One system (8x8) enables us to 'meet' online with a party to a dispute, meaning that face to face contact has been possible (especially during lockdown). This has been an important part of keeping a human touch and building trust with users. The other system used (Microsoft teams) enables us to hold a mediation with both parties at the same time. Each party is in a separate 'room' so that they need not see or speak with each other. However the mediator is able to speak with each party immediately and this proves highly successful for ensuring easy and rapid contact.

27. Do you have evidence on the relative effectiveness of different technologies to facilitate dispute resolution? What works well for different types of disputes?

Yes – as will be seen from the answers to other questions in this section, we have used an extensive range of technologies to facilitate and improve our dispute resolution services.

The experience we have gained as a result shows, in particular, that:

- it is not so much different types of disputes that is significant but more so different types of disputants
- whilst technology is welcomed by many users, our services cannot be digital by default
- there is a risk that increasing the use of technology risks 'dehumanising' the process
- the use of technology must be supported by other methods of communication which give a human 'face' to the process

Our preference is to use a 'blended' approach to communication. We use online processes combined with telephone/online communication to obtain the facts and evidence from the parties. We use these tools to assist in early, face to face, communication between the parties with a view to facilitating their settlement of their dispute.

28. Do you have evidence of how technology has caused barriers in resolving disputes?

PRS Mediation came into its own as a new service that was launched during (indeed, as a result of) lockdown. Whilst lockdown has quickened the move towards digital systems, it has also highlighted that dispute resolution processes cannot be solely digital. We have experienced a number of users who preferred to talk to individuals or who had particular needs that called for greater support. Not

all who access dispute resolution are computer literate and many have limited or no access to online services.

Alternative provision must always be made for such parties because to make systems 'digital by default' risks excluding those who already find access to dispute resolution more difficult.

29. **Do you have evidence of how an online dispute resolution platform has been developed to continue to keep pace with technological advancement?**

Please see our answer to question 26 above. In **PRS Mediation** in particular, we have rapidly evolved from an initial telephone-based service to one making use of video-conferencing to make face to face contact, and now online meeting rooms enable three-way simultaneous dialogue between the mediator and either party to the dispute.

30. **Do you have evidence of how automated dispute resolution interventions such as artificial intelligence-led have been successfully implemented? How have these been reviewed and evaluated?**

Please see our answers to the other questions in this section.

We review and evaluate the processes and systems we use by:

- listening to feedback from external customers
- listening to feedback from internal users
- reviewing the types of enquiries that reach our telephone-based contact centre to gauge whether changes to systems increase the ability for users to 'self-serve' satisfactorily

We have in particular identified that many of the enquiries relate to guidance over the remit of the scheme, and signposting users - where appropriate - to other effective forms of redress, advice, or guidance. We are redesigning our website to improve the ease with which this information can be accessed online, and evaluating how we can make greater use of online diagnostic tools (such as a 'bot' or 'wizard') to provide this guidance in an interactive, bespoke, manner.

6. Public Sector Equality Duty

We are required by the Public Sector Equality Duty to consider the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people in shaping policy, delivering services and in relation to our own employees.

31. **Do you have any evidence on how protected characteristics and socio-demographic differences impact upon interactions with dispute resolution processes?**

32. **Do you have any evidence on issues associated with population-level differences, experiences and inequalities that should be taken into consideration?**

For ease of reference, we have answered these questions together.

The Department for Business, Energy, industrial Strategy (BEIS) Final Report (April 2018) into *Resolving Consumer Disputes: Alternative Dispute Resolution and Court System* indicated that the characteristics of consumers that took a dispute to ADR or to court are very different to the general consumer population. Of the consumers who had used ADR, 69% were male, 69% were over 50 years old, 66% held a degree level qualification or higher, and 42% reported a household income about £50,000 (of those that reported an income). Consumers who had used the courts reported similar characteristics.

Most consumers in the BEIS sample used ADR to resolve a communications, energy, professional or financial services problem. Since the consumers of these services are often home owners, who we might expect to be older and have higher incomes than the overall population, it is unsurprising that the users of ADR also share some of these characteristics. Even so, the findings do indicate that some groups of consumers may not be benefitting from ADR and the courts as much as others.

In the **Property Redress Scheme**, consumer access to redress is helped by two main factors. Firstly, participation in a redress scheme is mandatory for businesses. Businesses are also required to make clear which redress scheme they belong to, and to signpost consumers to the relevant scheme as part of their internal complaints procedure.

In the **PRS Mediation Scheme**, mediation is initiated by the landlord instructing the scheme. This improves consumer (tenant) access to the scheme since the scheme itself reaches out to tenants to offer the service.

However we are aware from our experience of operating both schemes, that consumers vary significantly in terms of their experience, knowledge, and understanding – as well as factors such as their technical ability and access to the internet. This is where we find that making greater use of a telephone-based approach bring significant benefit to how consumers are able to interact with the dispute resolution process. Early, collaborative, first contact by telephone enables us to gauge a consumer's needs and understanding, and to make reasonable adjustments where appropriate. This can be as simple as ensuring the use of plain language to facilitate communication, as well as other more targeted adjustments. Examples we have experienced include:

- arranging interpreters for those whose first language is not English
- liaising with advocacy bodies who help people who, because of disability, illness, social exclusion and other challenges, find it difficult to express their views or get the support they need (for example https://www.pohwer.net/
- making adjustments to how we service consumers with other particular needs (e.g. eyesight, hearing etc)

7. Additional evidence

Please share additional evidence in relation to dispute resolution, not covered by the questions above, that you would like to be considered as part of this Call for Evidence.

The effectiveness of early intervention in dispute resolution

We have referred elsewhere in this consultation response to the importance of keeping a human face in dispute resolution, and also how disputes become more difficult to resolve the longer they continue.

The **Property Redress Scheme** saw rapid growth in membership in 2020, which in turn led to a 27% increase in complaint numbers. It might be expected that this increase would lead to stretched resources and slower decisions. However, because we have focused on early resolution, we have actually reduced the time it takes to resolve a complaint to an average of 35 days in 2020 (7 days less than in 2019).

The significant benefit of early resolution is that it provides a proposed solution to a dispute which is accepted, by choice, by both parties. Being a consensual outcome, this is more palatable and engaging than an imposed decision later in the process.

With early resolution, our sole focus is to understand the root cause of the complaint and talk, listen and negotiate with both sides. The early resolution step makes far greater use of telephone-based contact with the parties at a much earlier stage in the process – before needing full evidence from both parties and before needing a formal written decision. This has meant that resolution is reached in an average of only 21 days.

We have also found that our agent members have been very responsive and proactive in working with us to change our approach towards increased early intervention, and this reflects that the sector has embraced the importance of redress.

The dispute resolution gap in the private rented sector

As will be seen from this consultation response, we have operated the Property Redress Scheme since October 2014. The scheme has had great impact in delivering redress and raising standards, but landlords remain the notable group not covered by a redress scheme. This is significant because:

- approximately 50% of the private letting market is self-managed (so disputes can only go to a court, if relevant)
- approximately 50% is fully managed by an agent, so there is redress against the agent who must belong to a scheme, but only in relation to issues that are the responsibility of the agents, and not issues that are the responsibility of the landlord.

We consider it the extension of the redress scheme to include landlords, to be a logical development of an already well-proven scheme. We are currently beginning work on a voluntary pilot scheme to be operated in conjunction with the National Association of Residential Landlords (NRLA). We believe that landlord redress should become mandatory in a similar way to that required for property agents and property professionals.

The role that dispute resolution plays in driving up standards

In the **Property Redress Scheme**, one of our functions is to assemble data about complaints in the private rented sector, and to provide information to assist Trading Standards with their regulatory functions which govern market issues and behaviour. We are able to gather and analyse data on the

types of case that we receive, what they are about and the businesses they involve. This data is essential for regulators to intervene and enforce criminal legislation where necessary. This 'high level' use of data is one result of a statutory scheme being introduced into a sector that was considered to have high levels of consumer detriment (the "stick").

There is however a further, different, way of using this data. We have referred elsewhere in this consultation response to the role that such information can play in delivering benefit to the businesses that participate in a dispute resolution scheme. An effective dispute resolution scheme needs to be able to resolve disputes where they do arise but needs also to take a wider role in identifying the cause of complaints and how they can be avoided. This is an important driver in changing the mindset of businesses to view resolving and preventing complaints as a way of increasing their revenue, and not simply a way of increasing costs (the "carrot").

About you
Please use this section to tell us about yourself, including your experience of dispute resolution.

Full name	Michael Morgan
Job title or capacity in which you are responding to this call for evidence exercise	Legal Division Manager
Date	25th October 2021
Company name/ organisation (if applicable)	The Property Redress Scheme *The Property Redress Scheme is a trading name of HF Resolution Ltd*
Address	Premiere House 1st Floor Elstree Way Borehamwood
Postcode	WD6 1JH

Experience of dispute resolution, if any:

As Hamilton Fraser's Legal Division Manager, Mike leads the PRS tenancy mediation service, giving quick and cost-effective solutions to disputes, saving the time cost and delay of court proceedings, and leads the Property Redress Scheme's Operations team.

Mike also leads the HF Assist letting agent helpline service. This gives agents guidance on day-to-day lettings matters and a 24/7 legal helpline for other aspects of running their business.

A qualified solicitor and previously the Tenancy Deposits Scheme's Dispute Resolution Director for over 13 years, Mike is passionate about preventing disputes through access to the best advice and guidance, and also resolving them quickly and easily where problems do arise. He is a Qualified Adjudicator (ACIArb) and has a Professional Award in Ombudsman and Complaints Handling Practice (Queen Margaret University and Ombudsman Association).

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond. If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Not applicable.

Please give us further information on your specialist area

The Property Redress Scheme (PRS)

All property agents and professionals that carry out estate, lettings and property management work in the property industry have a legal responsibility to join an authorised redress scheme. The Property Redress Scheme (PRS) is authorised by the Ministry of Housing, Communities and Local Government (MHCLG) and National Trading Standards Estate and Letting Agent Team (NTSEALT) to provide redress for estate, lettings and property management agents.

The PRS is also authorised by the Chartered Trading Standards Institute (CTSI) to resolve disputes, under the ADR Regulations 2015.

Under our CTSI authorisation we offer a service to property professionals e.g. company landlords, inventory clerks, tenant relocation experts, property finders, removal companies. The advantage for these kinds of professionals is that membership offers an open and transparent resolution service which can increase their reputation and offer their customers confidence.

By joining the PRS the property agents and professionals agree to resolve complaints using our resolution process and agree to abide with our final decision when they are legally required to do so.

The PRS Mediation Service

In addition to this, the PRS operates a mediation service to find solutions to disputes between landlords and tenants, using impartial mediators. We bring common sense and expertise that work for both landlords and tenants. Disputes can relate to rent arrears or other issues that have arisen during a tenancy.

The pandemic brought with it a rapid increase in rent arrears, and a rapid increase in the length of notice that must be given to tenants before commencing possession proceedings. With a ban on eviction during lockdown, there was also a significant increase in the backlog of cases to be dealt with at court, and the timescales for addressing them.

Please tick to confirm if you are happy to be contacted for follow-up discussion

YES we are happy to be contacted for follow-up discussion.