



GUIDE TO AGENT REDRESS SCHEMES

Introduction

1. From 1st October 2014 letting and managing agents must become a member of a redress scheme. The purpose of these schemes is to deal with complaints made by tenants or landlords about agents. Essentially these are Ombudsman Schemes.

Who must join a scheme?

2. Anyone who engages in either Lettings Agency Work or Property Management Work must be a member of a redress scheme. This will be a legal requirement. There are certain exemptions from this requirement - see below.

The schemes

3. When required, you as an agent must be a member of one of three schemes if you are not already -
 - o The Property Ombudsman
 - o Ombudsman Services Property
 - o Property Redress Scheme
4. The first two schemes are already in operation. The third scheme is a newly authorised scheme. Many agents are already members of either the Property Ombudsman Scheme or Ombudsman Services Property on a voluntary basis. The Property Redress Scheme is now accepting applications for membership.

What is Lettings Agency Work?

5. Lettings agency work is defined as things done by any person, in the course of a business, in response to instructions received from a person seeking to find another person wishing to rent a dwelling house in England under a domestic tenancy and having found such a person to grant such a tenancy (the "prospective landlord"). Property finding services where agents work for a prospective tenant to find a property are also covered.

What is Property Management Work?

6. Property management work is defined as things done by a person (the Agent) in the course of a business in response to instructions received from another person (the Client) where the Client wishes the Agent to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on a client's behalf and the premises consist of a dwelling house let under a relevant tenancy.

What tenancies are covered?

7. For lettings agency work essentially letting premises on assured shortholds and assured tenancies generally are covered; whereas with property management work the definition is wider as it includes not only lettings under an assured tenancy (including assured shortholds) but also where there is a long term tenancy in place (such as a flat held under a long lease by an owner/occupier).



Business Activities

8. It is to be noted that these activities must be carried out in the course of a business. The question arises whether people acting as "informal" agents are covered, e.g. a father letting/managing a property owned by his daughter or a retired surveyor who manages a property for a friend. Likewise, it is uncertain whether an arrangement between two landlords who each cover for the other when one of them is on holiday are covered. Further guidance is awaited.

Exemptions

9. Lettings agency work does not include things done where an employer is letting to an employee/worker so that the employee/worker is the prospective tenant. There are further exemptions in the regulations for Universities and social landlords as well as lawyers.

Enforcement

10. The local authority is enforcement action. There is a civil penalty of up to £5,000 for breach of a requirement to belong to a redress scheme. There are rights of appeal against a penalty.

Who can complain to a scheme?

11. Tenants, including prospective tenants, and Landlords, can complain. Any tenant or prospective tenant can make a complaint but in relation to landlords, the position is more restricted and depends on the individual scheme's rules. The position is as follows:-
 - o **The Property Ombudsman** - landlords with a turnover of [£3.4million] can access the scheme.
 - o **Ombudsman Services Property** - only landlords who are consumers can complain. This means, in practice, that only smaller landlords will be able to make a complaint. The law on who is or is not a consumer in the case of a landlord is far from clear.
 - o **The Property Redress Scheme** - Details to be announced.

What rules apply?

12. The particular rules applied which agents must comply with vary from scheme to scheme. In all cases any Government approved code of practice in effect underpins the scheme and the consumer protection legislation outlined in the Competition and Markets Authorities Guidance to Consumer Protection will be relevant. Ombudsman schemes have to have regard to the law but can also apply principles of fairness. Both the Property Ombudsman and Ombudsman Services have detailed rules as well which must be observed by agents. Initially at least the Property Redress Scheme will rely on the PRS Code of Practice (once published) as the basis of rules for their scheme.



What can a redress scheme do?

13. If a complaint is found proven then schemes have a number of options:-
 - o Require an apology
 - o Issue a reprimand
 - o Order compensation
 - o Fine a member
 - o Expel a member
14. As regards compensation, the amounts payable are capped at £25,000 and if an aggrieved party wishes to claim more they have to proceed via the Courts; rather than the Ombudsman Scheme. Members of the Scheme are bound by the Scheme decision but complainants do not have to accept the decision. They can go to Court instead if they are not happy with the outcome.
15. If an agent is expelled then they are likely be refused access to membership of another scheme so effectively they could not then legally operate if no scheme will accept them into membership.

For further information and to apply <https://www.gov.uk/redress-scheme-registration-estate-agencies>

